S. Hrg. 101-247, Pt. 4A

REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE WALTER L. NIXON, JR.

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE WALTER L. NIXON, JR., A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, FOR HIGH CRIMES AND MISDEMEANORS

PRIOR RECORD ADMITTED INTO EVIDENCE:
U.S.A. v. WALTER L. NIXON, JR.
CRIMINAL ACTION NO. H85-00012 (L)

Part 4A of 4 Parts
Vol. I

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101st Congress
1st Session

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JUDGE WALTER L. NIXON, JR., IMPEACHMENT INQUIRY TRANSCRIPT OF PROCEEDINGS U.S.A. v. WALTER L. NIXON, JR. CRIMINAL ACTION NO. H85-00012(L)

(Part 1)

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(Part 1)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 27-28, 1986

PLACE: Hattiesburg, Mississippi

APPEARANCES:

For the Government:

Reid Weingarten
Jan Little
Public Integrity Section, Criminal Division
Department of Justice
Post Office Box 50168
Washington, D. C. 20004-0168

For the Defendant:

Michael S. Fawer
Herbert V. Larson
Fawer, Brian, Hardy & Zatzkis
700 Camp Street
New Orleans, Louisiana 70130

VOLUME 1

20000

DAVID A. SCOTT
COURT REPORTER
Post Office Box 2202
Jackson, Mississippi 39225-2202

JANET CLEMENS
COURT REPORTER
Post Office Box 517
Oxford, Mississippi 38655

(January 27, 1986:)

(Jury sworn.)

BY THE COURT:

You may be seated. Members of the jury, now that you have been sworn I will give you some preliminary instructions to guide you in your participation in the trial. It will be your duty to find from the evidence what the facts are. You and you alone are the judges of the facts. You will then have to apply those facts to the law as the Court will give it to you. You must follow that law whether you agree with it or not. Nothing the Court may say or do during the course of the trial is intended to indicate, nor should it be taken by you as any indication of what your verdict should be. The evidence from which you will find the facts will consist of the testimony of witnesses, documents, and other things received into the record as exhibits and any facts that the lawyers may agree or stipulate to or that the Court may instruct you to find.

Certain things are not evidence and must not be considered by you, and I will list them for you now. Opening statements, closing arguments, and questions by the lawyers are not evidence. Objections to questions are not evidence, and lawyers have an obligation to their clients to make an objection when they believe evidence offered is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other answer.

If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction. Testimony that the Court has excluded or told you to disregard is not evidence and must not be considered. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence, direct and circumstantial. Direct evidence is direct proof of a fact such as the testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but have in mind that you may consider both kinds of evidence. It will be up to you to decide which witnesses to believe and which witnesses not to believe and how much of any witness's testimony to accept or reject. I will give you some guidelines to determine the credibility of the witnesses at the end of the case.

As you know, this is a criminal case. There are three basic rules about a criminal case which you must keep in mind. First, the defendant is presumed innocent until proven guilty. The indictment against the defendant brought by the government is only an accusation and nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate.

Second, the burden of proof is on the government until the very end of the case. The defendant has no burden to prove his innocence or to present any evidence or to testify. Since the defendant has a right to remain silent, the law prohibits you from arriving at your verdict from considering that the defendant may not have testified.

Third, the government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this later. Bear in mind that in this respect a criminal case is different from a civil case.

Now, a few words about your conduct as jurors. First, I instruct thank you during the trial you're not to discuss the case with anyone, or permit anyone to discuss it with you. Until you retire to the jury room at the end of the case, deliberate on your verdict, you simply are not to talk about the case.

Soaked, you must not read or listen to anything touching on this case in any way. If anyone should try to talk to you about it, bringing it to the Court's attention promptly. If there is publicity in the newspaper or radio or television accounts you are to disregard this publicity. Do not permit your wives or your husbands or anyone else to relate these reports or accounts to you.

Third, do not try to do any research or make any investigation about the case on your own. Finally, do not form any opinion until all the evidence is in. Keep an open mind until you start your deliberations at the end of the case.

The ethics of the legal profession are strictly adhered to by the lawyers and the Court. Please do not embarrass counsel engaged in the trial of cases before you by visiting with them or asking them questions.

All cases are important cases for both sides. Your failure to agree upon a verdict will necessitate another trial. The Court is of the opinion that a case usually cannot again be tried better or more exhaustively than it has been on either side. It is therefore very desirable that you should agree upon a verdict. In law enforcement, strictly speaking in all cases, absolute certainty cannot be attained or expected. And although the verdict to which the juror agrees must of course be his or her own verdict, the result of his or her own convictions, and not a mere acquiesence in the conclusions of his or her fellows, yet in order to bring twelve minds to a unanimous verdict, you must examine the questions submitted to you with candor. You should consider that the case must sometime be decided, and that you're selected in the same manner and from the same source from which any future juror must be. There is no reason to suppose that the case will have been submitted to twelve men or more more intelligent, more impartial, or more competent to decide it; or that more clear evidence will be produced from one side or the other. With this view, it is your duty to decide the case, if you can conscientiously do so.

After you have arrived at a verdict, you need not discuss what happened in the jury room in arriving at your verdict. If the lawyers and litigants, government agents, press or television make inquiry of you, you will advise them the Court has instructed you that you need not reveal those deliberations unless the Court issues an order instructing you to reveal your deliberations. In some unusual case it may be necessary for the Court to make an inquiry concerning your deliberations, but you need not respond to questions from anyone concerning your deliberations, neither civil or criminal case, unless the Court has issued an appropriate order.

Now, ladies and gentlemen of the jury, unfortunately the government's lead attorney, Mr. Reid R. Weingarten, was taken ill over the weekend and was hospitalized, and in order to give them an opportunity to get themselves in better shape. figure out what they're going to do, the Court has granted them a twenty-four hour continuance for the trial of this case. I'm sorry we have another delay, but hopefully Mr. Weingarten will get better. If he doesn't, Ms. Little is going to take over the trial of the case.

So we'll recess until nine o'clock tomorrow morning. Thank you very much.

(Recess.)

(January 28, 1986:)

BY THE COURT:

All right. Are there any witnesses the courtroom, other than the FBI agents and Mrs. Nixon? Both sides have agreed that the witnesses shall be excluded.

The government may make their opening statement.

MR. WEINGARTEN: Thank you, Your Honor.

BY MR. WEINGARTEN:

May it please the Court. Mr. Fawer, Judge Nixon, Mr. Larson. Ladies and gentlemen of the jury. Good morning.

There is a mean virus going around southern Mississippi. I very much apologize for the delay. I hope it wasn't too much of an inconveniences.

Let me reintroduce myself. I'm Reid Weingarten. With me at counsel table, Jan Little -- we're from the Justice Department -- and Don Lawless from the FBI in Hattiesburg.

My job now is to introduce the case that the government will prove. Before I do, I think a word is in order, just a word, about the procedures that have brought us this far. Jurors are always puzzled by the jury selection process, why did it have to take so long? Why were so many questions asked? Did we really need so many people. I assure you, everything that was done last week at the Civic Center was done for one reason, to secure a fair and impartial jury. A fair and impartial jury is the first essential step in a trial that has but one purpose, and that is a fair and just verdict. Justice and only justice must be the result of what we do in a court of law.

Ladies and gentlemen, we all lose if trials are not fair. We all lose if people who haven't committed crimes are found guilty at the conclusion of jury trials, and we all lose in people who commit crimes are acquitted at the end of jury trials. These are fine sounding words; what do they really mean? How do you do justice? It's been said that the path that justice travels is through truth. Only when the true circumstances are known in a case can a jury begin to do justice.

In the next few days you'll listen to witnesses, study exhibits, follow the instructions of the Judge, and most of all, you'll use the good, common sense and wisdom and experience you've gained from living in this district, to determine what happened in this case. In so determining you must leave all bias, prejudice, favor, sympathy, all preconceived notions about this and any other case, outside the courtroom. It's not so easy. And let me mention something that was hammered over and over again last week. The defendant in this case is a public official, he's a judge. That doesn't mean you hold him to any higher standard, and it doesn't mean you give him any breaks.

In this case, the most important issue that you will decide will be whether or not Judge Nixon committed perjury in the grand jury. You will hear that witnesses in the grand jury take an oath and swear to tell the truth. On the one hand, Judge Nixon has no greater responsibility to tell the truth in the grand jury than any other witness. On the other hand, he, like all citizens, has an obligation to tell the truth in the grand jury, and the perjury statutes apply to him just like everyone else.

What is the evidence in this case? It might be helpful for me to first introduce the main characters in the government's case. There will be Wiley Fairchild. Wiley Fairchild is a prominent, extremely wealthy Hattiesburg man, in his 70's. Millions of dollars worth of interests in minerals.

You'll meet Wiley Fairchild's son, Drew Fairchild, a man in his 50's, who at one time was the airport manager at the Hattiesburg Airport. You'll meet Bud Holmes, a man in his 50's. Hattiesburg attorney, close friend of Judge Nixon, he was the district attorney here in Hattiesburg, Forest County, from 1980 to 1984.

Carol Ingram, man in his 40's, attorney here in Hattiesburg. Attorney who appears before Judge Nixon, used to be a state senator, distant relationship of Wiley Fairchild.

He's a lawyer for Wiley Fairchild.

What are the facts? Envision two parallel tracks running, let's say south to north. There will be two tracks of evidence. One track will be the Drew Fairchild drug smuggling case. The second track will be a transaction in which Wiley Fairchild transferred mineral interests to Judge Nixon. Let's consider the first track, Drew's case. There will be much evidence on Drew's case. Some of it will be somewhat complicated. Let me introduce it this way, the way we'll introduce it in trial, primarily will be through Drew. Drew will be the government's first witness. We'll let him explain to you what happened in his own words. You'll hear that in August of 1980, more specifically August 4th, 1980, there was a bust at the Hattiesburg Airport. Customs plane followed in a drug smuggling plane, captured the plane and about twenty-two hundred pounds of marijuana on the ground. There were arrests made on the ground, people charged. The federal government, meaning U. S. Attorney's Office in Jackson, assumed responsibility of the case immediately, and indictments were returned within weeks against three of the smugglers.

It was clear immediately to the investigators on the ground that the smugglers had had help at the airport. At that time the airport managers were Drew Fairchild and a man named Robert Royals. Suspicion immediately centered around them. Draw Fairchild was contacted by law enforcements, he retained an attorney, man named Porter, who is now deceased. Porter and Drew Fairchild went to Jackson to meet with the United States Attorney's Office. United States Attorney, then and presently, George Phillips. you'll meet George as well.

An agreement was reached, tentative agreement wherein Drew Fairchild agreed to cooperate with the United States. Completely cooperate, help make other cases, help explain what was going on at the airport in Hattiesburg, in return for a guilty plea and a promise of probation. You'll hear evidence that the cooperation that the United States expected was not forthcoming; that the United States Attorney's Office was not satisfied, withdrew the agreement and intended to prosecute Drew.

Then you'll hear that about a year later after the bust, the DA in Forest County, Bud Holmes, contacted George Phillips and asked him for the case. Now, in some crimes there will be dual jurisdiction, meaning both the federal government and the local DA can prosecute. Drug cases are just such a case. You'll hear that the district attorney called George Phillips, said I would like to prosecute the case, you'll hear his reasons for wanting to prosecute the case. You'll hear that George Phillips, whose office has more than enough cases for them to handle in Jackson, agreed to give Bud Holmes the case.

You will hear evidence that in August 1981, Bud Holmes down here in Forrest County presented an indictment to the Forrest County Grand Jury, naming Drew Fairchild as a defendant and the pilot of the plane who was then a fugitive, a man named Watkins. You will hear evidence that January 82 Drew Fairchild pled guilty in Forrest County court. And he again agreed to cooperate with the authorities, this time against Watkins. And you will hear evidence that that's where the case sat from January 82 basically through the rest of Bud Holmes' term. You will also hear evidence that Wiley Fairchild became very very unhappy at how the case was being handled at the local level. You will hear that he was unhappy about the delay, you will hear he was unhappy because of the publicity the case was receiving and you will hear evidence that he was very unhappy that Robert Royals, who formerly was Bud Holmes' pilot, was not being prosecuted by Bud Holmes, even though he was the airport manager at the Hattiesburg airport at the time of the bust along with Drew Fairchild.

You will also hear evidence that Robert Royals had a conversation with Wiley Fairchild, that Wiley Fairchild interpretted to be a blackmail threat. Wiley Fairchild interpreted the blackmail threat to come from Bud Holmes, that Bud Holmes was reaching out to him through Bob Royals for money to fix Drew's case and you will hear that Wiley Fairchild got very angry and you will hear that Wiley Fairchild sought the help of Judge Nixon.

Why? You will hear evidence that Wiley Fairchild thought that Judge Nixon owed him a favor. To understand why he thought that, we must turn to the second track of this case. There will be evidence about mineral, royalty interests and I know most of you don't know anything about it, this is a complicated subject. Some of the evidence might be complicated, let me introduce a skeleton of the transaction this way: On or around February 25, 1981, -- please remember dates here because they're important -- mineral royalty interests were prepared in Wiley Fairchild's office. They were sent to Carroll Ingram for shipment to Judge Nixon. Ingram sends them back to Wiley with basically two instructions, increase the interest, in other words give more to Judge Nixon, and back-date the deeds, Wiley's office back-dated the deeds to February 25, 1980 and sent them back to Ingram. Ingram presents notes, notes in the amount of 95 hundred dollars, memorializing an indebtedness from Judge Nixon to Wiley Fairchild and he back-dates the notes to February 25, 1980. Ingram brings the documents to Nixon, Ingram advises Judge Nixon about the back-dating, Judge Nixon signs the notes and Ingram records the notes in the appropriate county courthouses pursuant to Wiley Fairchild's instructions. Royalties begin flowing to Judge Nixon until in August 1982 he has received over $62,000 in still producing wells. Notes, the notes that I just mentioned, the 95 hundred dollars in notes were repaid only once the royalty payments began coming in and they were paid out of the profits. Judge Nixon, you will hear evidence, was never out of the pocket in this deal. He paid a total of over $11,000 including interest back to Wiley Fairchild. That's the skeleton of the transaction.

Let me put some flesh on the bones. The transaction got underway when Judge Nixon specifically asked Carroll Ingram to get him a royalty investment with Fairchild. It was Judge Nixon, the evidence will show, who brought up Wiley first. Judge Nixon never knew Wiley Fairchild. He only knew him to be an extremely wealthy man. You will hear evidence that Carroll Ingram, a lawyer, who appears before Judge Nixon, an officer of the court, was very hesitant to go forward with this request. You will hear evidence that the Judge persistently inquired of Ingram if he had made contact with Fairchild.

You will hear evidence that it's got to the point that Carroll Ingram was ducking Judge Nixon's calls. You will hear evidence that Ingram finally yielded to the Judge's pressure and approached Wiley Fairchild. You will hear Wiley Fairchild agreed to put the Judge in the deal and you will hear why when Wiley Fairchild testifies. He didn't put the Judge in a deal immediately however. He waited until he found the right investments. Meanwhile Judge Nixon had spoken to Bud Holmes' about Wiley Fairchild. Bud being from Hattiesburg had a long history with Wiley Fairchild. Holmes told Judge Nixon that he had a history of getting next to people in power, that if he invested money with Wiley, there was no way he was going to lose.

February 25, 1981, Wiley acts. He picks three of his wells, because the oil and gas business is risky, and he wanted to make sure the Judge made money. As it turned out, two of the wells were extremely successful and one was not successful. Only on February 25, 1981 was the legally enforceable -- was there a legally enforceable deal between Fairchild and Judge Nixon.

Then came the back-dating. We'll prove it was with Ingram's instructions, Wiley's office carried it out and Judge Nixon went along with it. We'll prove the deal was legally effective in February 25, 1981, the back-dating changed nothing, but the appearance of the deal. It made it appear that a legal deal was one year earlier than it actually was.

Off the back-dating, Judge Nixon and Wiley Fairchild finally meet. 'Til then there had been no negotiations, no bartering, no discussions of wells, prices, interest rates, nothing. They meet, they express pleasure at doing business with each other and Judge Nixon says to Wiley Fairchild, "If I can ever help you, I will. And if I can't, I will tell you I can't."

Fairchild looked for help from Judge Nixon when he became extremely unhappy about how his son's case was being handled. Now note there's no love lost between Wiley and Drew, his son. But you will hear evidence that Wiley was horrified at the publicity, ashamed his name was being associated with drug dealing and was very very angry that he thought he was being blackmailed by Bud Holmes. Wiley Fairchild seeks out Judge Nixon and Judge Nixon comes to Wiley Fairchild's office. The scenes that follow will be the key evidence of the government at trial.

Wiley tells Judge Nixon Bud is blackmailing him, that his son is being prosecuted by Bud only because his dad had money and that Royals was not being prosecuted and this in effect was blackmail. Judge Nixon says to Wiley I'll see what I can do. Judge Nixon goes to see Mr. Holmes. The two men drive out to Bud Holmes' farm around Hattiesburg, Judge Nixon tells Bud that he's extremely happy at the business relationship he's developed with Wiley Fairchild and that he's looking forward to more investments with Wiley Fairchild. He says, Bud, I would never ask you to do anything against the oath of office or to embarrass you, but Wiley asked me to say something to you about helping his boy. Bud Holmes is only too happy to please his friend, the Judge, and says, Judge, I'll do anything you want me to do to help, I'll do anything at all. I can pass the case to the files.

They get to Bud's farm and Judge Nixon asks, Bud, is all right if I call Wiley and tell him you're going to help with his problem? Bud Holmes has absolutely no objection to it all. Judge Nixon calls Wiley, says, Wiley, this is Walter, I'm at Bud's home and I'm happy to report he's going to help your boy. Bud gets on the phone and says to Wiley, when this man asks me to do something, I do it.

Later on, Judge Nixon and Carroll Ingram talk about this sequence. Judge Nixon tells Ingram that he talked with Wiley about Bud's handling of Drew's case. He confirms to Ingram that Wiley had serious problems with the way Bud was dealing with Drew. He told Ingram that Holmes was favorably disposed to help Wiley on Drew's case and then Judge Nixon requested of Ingram that he be of assistance to him in getting more deals from Wiley.

The next significant thing in Drew's case is Bud Holmes passes it to the file. That really means dumping it on the inactive list. The case came back to the active list when the press and the Judge in Forrest County realized what Bud had done, but Bud never did another official thing on the cAse to see it to conclusion during the entire time he was district attorney.

Now, that's a mouthful. Let me clarify the role of of lawyers. You understand of course what I say is not evidence. No words out of the mouths of attorneys are evidence. It's only an introduction, lawyers are really the least important people at trial, we have one job, to help you get at the truth. A trial is not a game of skill, a contest between lawyers, it is a search for the truth. If a lawyer in this courtroom or any other courtroom distracts a jury at getting to the truth in doing that search, draws attention to himself and not the evidence, he's not doing his job.

Evidence of course comes from the witness stand. The words of witnesses are evidence, not the words of attorneys. It is appropriate to mention something about the witnesses in this case. The main witnesses, I'm sure you have guessed, are those involved in the transactions I've described, Wiley Fairchild, Carroll Ingram, Bud Holmes. This case is not like a bank robbery, where people randomly selected to be in a bank at a given time are witnesses to a random event. Rather, these are the people who are involved in the transaction and these witnesses have not been selected out of a church choir. You want to check the credibility of these witnesses with extreme care and let me tell you why.

There came a time when an employee of Wiley Fairchild, a young man named Skip Jarvis, concluded that the transaction between Wiley Fairchild and Judge Nixon was corrupt and he contacted the FBI, he contacted the FBI at first anonymously and eventually came forward. A Grand Jury investigation began, witnesses were called in, witnesses were put under oath and witnesses testified. One of the witnesses was Wiley Fairchild. He testified in July, 84. He was not completely candid. He was prosecuted, he pleaded guilty to a felony, and spent two months commuting to a federal correctional institution in Jackson. Bud Holmes testified in the Grand Jury, he told untruths about the sequence I just described, about that telephone call. He was prosecuted, he pleaded guilty, he has been sentenced to serve one year in prison. Carroll Ingram testified in the Grand Jury. In his first appearance he did not mention the back-dating, the government called him on that and he was given an opportunity to come back and clarify his testimony. Indeed, this case will turn on the oath, at least two of the government witnesses have demonstrated that they're capable of ignoring that oath. The issue for you in this trial will be, are they telling the truth now? How can you tell? Well, in your gut, you listen to these witnesses and you will listen to your inner instincts, how does it strike you? Does it strike you as credible? You will try to decide whether or not there's corroboration on the testimony. For instance, an example of corroboration --

MR. FAWER: Your Honor, I don't like to object during statements, it is supposed to be an opening, not a summation. I ask the counsel for the prosecution be directed to setting forward the facts he is going adduce, not to argue the weakness of his case in advance. Thank you.

THE COURT: I'll let him proceed --

MR. WEINGARTEN: Excuse me? I didn't hear.

THE COURT: Proceed.

MR. WEINGARTEN: How can you tell if a witness is telling the truth? Your instincts make a determination whether or not the evidence is corroborated. And consider whether or not the witness has a motive to lie. If they lied at first, ask yourselves why did they lie at first and then ask yourself is there a motive to lie now? We submit the evidence will show that the witnesses who did lie in the past did so to protect themselves and to protect Judge Nixon. We submit the evidence will show that every witness the government calls to testify in this case will have every incentive in the world to tell the truth at this trial.

There was another witness in the Grand Jury and that of course was Judge Nixon, he testified on July 19, 1984, before that in April, 1984, he was interviewed, he was asked about the oil deal with Wiley Fairchild, he was asked about his contact with Drew's case. He denied any and all involvement in Drew's case. Following the interview by the government in April, 1984, Judge Nixon summoned Bud Holmes to his office. He instructed that Bud Holmes find out if the call that they made from Bud's farm to Wiley Fairchild was taped.

Bud Holmes did what he could, reported back to the Judge that the call was not taped and then Judge Nixon testified.

He was asked many questions, some of which were as follows: Did Wiley Fairchild ever discuss the case with you? Answer: No, not to the best of my recollection. I believe I would recall that if he had, believe me, but I don't recall that he ever did. Question: In accepting your answer as you state it, I need to ask you the follow-up questions. Answer: Very well. Question: Did Wiley Fairchild ever ask you to do anything vis-a-vis his son's case? Answer: Absolutely not.

He was also asked the following: The Grand Jury has hard evidence that the prosecutor, the state prosecutor who eventually handled the case, was an individual named Bud Holmes. Is he a friend of yours? Answer: Very good friend of mine. Long time friend? Yes. Question: Did he ever discuss the Drew Fairchild case with you? Answer: No, not to the best of my recollection. I think I would recall if he had.

At the conclusion of Judge's Nixon's testimony, he was asked: Judge, do you have anything you want to add? And he said: Yes, I do. I want to say this, I am here, here are your notes, copies of your instruments, rather, I came here voluntarily and I'm very happy to cooperate with this Grand Jury and give them all the information that I have and that I could. I always thought everyone should do that and that goes for the Grand Jury over which I'm supervising at this time, the other Grand Jury that's sitting at this time. I have nothing's to withhold, nothing to hide, and I've brought everything that you asked me to bring. I want to say this, I've been told and led to believe and read in the newspaper and heard on the news media so much with this, that it's an investigation of the Drew Fairchild case. Now I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild case in federal court or in state court. I don't need to reconstruct anything with reference to that. I've told you that from the beginning. I've never talked to anyone about the case, any federal judge or state judge, federal prosecutor or state prosecutor, and I never handled any aspect of this case in federal court. As you said, Judge Cox handled it. I don't know where someone told me, maybe Judge Russell handled one of the other defendants, also but I never handled any part of it, never had anything to do with it at all, never talked with anyone, state or federal, prosecutor or judge in any way to influence anybody with respect to this case.

I didn't know anything about it until I read that account in the newspaper, didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction. So I want to say this because I understand that's what this is all about. The investigation is apparently if the news media is correct and if I understand this correctly, that's what this is about, the Drew Fairchild criminal case.

When all is said and done, ladies and gentlemen, this is not so difficult a case, it really boils down to two issues: one, was the oil deal between Wiley Fairchild and Judge Nixon a legitimate arms' length transaction or was it an illegal gratuity? There was some loose talk last week about bribery. Bribery is not the charge in this case. Bribery means public official receives something in return for specifically promising to do something. That's not what Judge Nixon is charged with here. He is not charged with receiving the oil interests in return for a promise to fix Drew's case. Rather, he's charged with receiving something of value with knowledge that it was given to him because of his official position.

Issue two, did Judge Nixon have contact with and was he involved with the Drew Fairchild case? As I read to you, he said no in the Grand Jury. As to the first issue, we will prove that this was no legitimate arms length transaction.

Rather, it was the defendant's subtle and sophisticated use of his office to get his hands on some of Wiley Fairchild's mineral wealth. We will prove that it was nothing more than a sweetheart deal given to Judge Nixon because of his position that's put over fifty thousand dollars in profit into his pocket now, and makes him richer every day.

We'll also prove that Judge Nixon did get involved with Drew's case. We will prove that indeed he sought to influence his friend Bud Holmes to go easy on Drew so that Judge Nixon could get more such deals from Wiley Fairchild. We will prove that Judge Nixon did not want this evidence to come out in the grand jury. And we will prove that he testified falsely about his involvement with Drew's case when he came to the grand jury in July, 1984.

At the conclusion of the evidence, we will ask you to return verdicts that reflect that evidence. Thank you very much.

THE COURT: Mr. Fawer?

BY MR. FAWER:

Thank God we're here. Eighteen months we've listened to that, and for the first time we have a chance to refute it. May it please the Court.

Ladies and gentlemen of the jury, as each of you know, having spent at least some time with us last week, I am Mike Fawer. Together with Herbert Larson, my associate, we represent Judge Walter Nixon, we have the honor to represent Judge Walter Nixon, who has for seventeen years sat as a federal judge in this courthouse, who now appears before you, charged with having accepted an illegal gratuity from Wiley Fairchild, in exchange for agreeing to do some official act, and secondly with giving false testimony before a grand jury on July 18, of 1984.

Judge Nixon and I on his behalf categorically deny both charges. As you know, the charges are contained in an indictment, a document which his Honor has told you and we have spoken about it during the voir dire door process, it is not evidence. And it's essential that you bear that in mind. All too often, when I talk to some one who is not involved in the criminal justice system on a daily basis, I get the impression there is some meaning to an indicement. There is none. It has none in terms of evidence. The grand jury which filed and returned the indictment in this case heard only one side of the story. You ladies and gentlemen, you are the first body, the first impartial body, who will hear both sides of the story. That is why you are the key, you are the very heart of our system of criminal justice.

Just to put to rest the absolute meaningless necessary of an indictment in a criminal case, you only have to realize one thing. Every defendant who has ever been acquitted of a crime in an American courtroom first was charged by a grand jury, just like the one in this case.

You have sworn an oath to consider this man innocent as you listen to the facts unfold. You alone will decide where the truth lies, and from what you hear in this courtroom. We hope that you do listen to that, that you do not put aside your common sense when you decide who in fact has a motive to lie in this case. You will listen to the witnesses, and hear what comes from their lips. And from the documents, the few documents, there will not be many of them, that will be introduced in evidence.

Since the government alone has the burden of proof as his Honor has told you, at the end of this case you must determine whether the government has in fact proven beyond a reasonable doubt the charges lodged against Judge Nixon. We submit that the evidence, including the government's own witnesses, particularly their own witnesses, will contradict the criminality they would ascribe, that the government would ascribe to Judge Nixon.

At the heart of this prosecution, ladies and gentlemen, hear me well, is the misconception that there was something illicit about Judge Nixon's business transaction with Wiley Fairchild. From the day it learned of that transaction, I'm talking of the prosecutors, despite overwhelming evidence to the contrary as you will see, the prosecutors have clung to the belief that Judge Nixon allowed himself to be corrupted for an oil well investment with Wiley Fairchild. That misconception has been their touchstone, their guiding light. It has so distorted their vision that they believe anyone who will tell them what they want to hear, totally ignoring the motives of their own witnesses to lie, or their own inability to corroborate their witness's testimony.

This blindness, this distortion of reality, pervades this ill-conceived prosecution. Not because I say it, but because the evidence will demonstrate it.

For as the evidence will show, and keep the following in mind, you will see that there was none, no wrongful intent on Judge Nixon's part in making the oil and gas investments. It was, and has always been an arms length transaction, not a gratuity. Secondly, Judge Nixon neither intended to be influenced by the investment, nor did he ever misuse his position on behalf of Wiley Fairchild. Since he had nothing improper, since he had done nothing improper, he had absolutely no motive, none to lie to that grand jury in telling them that he had not discussed influencing Drew Fairchild's case.

And without such a motive, ladies and gentlemen, you don't need me to tell you this, he would have no reason, no intent, no state of mind as we talked about it last week, to lie to the grand jury. Think about those factors as we calmly discuss the relevant facts underlying the charges in this case.

Let's turn to when -- by the way, with some rare exceptions, when you think about it, Mr. Weingarten, aside from pointing out certain dates, cavalierly passed over when the events really occurred. We will tell you when they occurred, and our support will come in the main from their witnesses. But he doesn't want you know those dates because they are not consistent with his thesis.

Follow me. You never heard him talk about the year 1979. We can wait, because his witness will tell about it. Carroll Ingram. But what happened, where were we in 1979? Why is it germane? Walter Nixon at that time was 50 years old, he had been a federal judge for about eleven years at that time. He had, it was about three and a half years earlier, he had remarried. He and Barbara, who is sitting two from the end on the first row, had 7 children, five of whom were of school age. And like many other professionals who are on salary, and he was earning as a federal judge on the bench eleven years, fifty years of age, just over 54 thousand dollars. But like many others who were on salary, who have a large family, with school expenses, he was interested in supplementing his income for the future and the schooling expense that would come along by making some investments, be they real estate, oil and gas, didn't make any difference. There is nothing in the Code of Judicial Conduct which governs judges, like Judge Meredith, like Judge Nixon, which in any way prohibits a judge from making an investment of that type.

Judge Nixon mentioned his desire to invest to any number of his friends. Particularly those who were more aware, more sophisticated, more conversant with business than he was. Because as you will hear through this trial, Judge Nixon is a judge, he is an active member of the judiciary, he is very unsophisticated when it comes to business. That is not his forte. That is not something he has ever spent his life doing; simply he has a lack of sophistication in that area. In any event, one of his friends he had known for years was Carroll Ingram. Carroll Ingram was a Hattiesburg attorney, see him at times when he would sit in Hattiesburg or at times when he would be sitting in Jackson because Carroll Ingram in 1979 and for the last nine years prior to that had been in the state legislature. The two knew each other. When Judge Nixon was in town alone, Carroll Ingram was in Jackson away from his family, they would have dinner together on occasion when the two were up there.

Let me point something out. I don't know if you're aware of it. In the Southern District of Mississippi there are really five different courthouses, five different centers of activity. Judges actually travel around and hold court at all five. Judge Nixon's main base is Biloxi, but from Biloxi he travels on occasion to Hattiesburg, where he sits, to Jackson where he sits, to Vicksburg where he sits, and Meridian. Those are the five locations, and the calendar is set when they will sit in which courthouse. There are a few other judges. Judge Cox at the time, and Judge Russell. They too would move around and divide up the dockets this way.

In any event, that's the back drop. On several occasions Carroll Ingram and Judge Nixon had dinner, particularly up in Jackson, and Judge Nixon quite candidly discussed with Carroll, a friend of his, his desire to make some investments. Nixon knew, Judge Nixon knew that Carroll represented Wiley Fairchild, he had heard of Wiley Fairchild, he had never had any dealings with Wiley Fairchild. Wiley Fairchild, who was someone known in the Hattiesburg area, and Carroll Ingram not only represented Wiley Fairchild, but he was distantly related to him.

Fairchild, as you have heard, was a highly successful oil and gas investor in the Hattiesburg area and the owner of Fairchild Construction Company. As I said, Judge Nixon had never met him, he had no contact with him, had no cases involving him in front of him. In any event, he did know that he was what I just described, an oil and gas man, an owner of a construction company, a successful one at that.

Judge Nixon told Ingram that he did not know Wiley Fairchild, but would he, Ingram, consider speaking to him about Nixon, Judge Nixon investing with Wiley Fairchild in one or more of the oil and gas ventures that Wiley would be making. That he would like, he had about ten thousand dollars that he would like to invest, would Ingram talk to him. Ingram, without any problem as they suggest, agreed to do so.

When Ingram in fact broached the subject with Mr. Fairchild -- remember, Ingram was up in the legislature, wasn't coming back on a daily basis, when he had occasion to next normally see Wiley Fairchild, he mentioned it to Wiley Fairchild. As you will hear without hesitation, Wiley Fairchild said he would be happy to do that, that he had never met Judge Nixon but he had heard he was a good man, only heard good things about him, be happy to do it.

Carroll Ingram reported that conversation back to Judge Nixon. Of course the Judge was happy that that's what the reaction of Mr. Wiley Fairchild was. Several months went by before anything further occurred. Judge Nixon asked Carroll Ingram about it, when was the thing -- when was it going to take place, and Ingram, who knew Wiley Fairchild quite well, you will see, Wiley Fairchild is something -- I won't say he's eccentric; he's in his 70's, he has an unusual, he does things in his own time, in his own way, and that's what Carroll told Walter Nixon. That if he said he'll do it, there is no problem, he'll get around to it.

The only thing Judge Nixon told Carroll Ingram, okay, I need some advance notice, I'm going to need to finance the investment through my bank, I just need to have some advance notice to get the money together before I have to put it up.

Ultimately, you will hear this from the lips of Carroll Ingram, ultimately Wiley Fairchild told Carroll Ingram he had decided on certain oil wells that he would sell interests in which he would sell to the Judge. Three such wells that look promising to him. Small portions, fractional portions of which he would sell to the Judge. And he gave to Carroll Ingram the names of the locations every those three wells and the amounts of acreage that he would assign, sell, to the Judge. You will hear from Carroll Ingram that that occurred. They were in Marion County, well in March County, Covington County, and one in Mobile County in Alabama.

Carroll Ingram made notes of what those -- I mean obviously it's not something you carry around in your mind, Carroll Ingram made a note of that information and kept it in his desk. He mentioned -- Carroll mentioned to Wiley that the Judge was going to finance the investment, and Wiley said, tell him not to bother, I'll carry the paper, he doesn't have to go to the bank, I will carry the paper for him. Carry the paper, he will do the financing. Just the way somebody from whom you would buy your home would carry the mortgage. In this instance, Wiley Fairchild was saying, the approximate ten thousand dollars that he would go to borrow from the bank, he can borrow from me and pay me the interest instead of paying the bank. That was reported back to Judge Nixon.

Dates, never heard about a date from them, did you?

I submit to you, and you will hear from witnesses, all of this occurred before there ever was an inkling of a problem that Drew Fairchild had. Did you hear them mention that? I didn't. All of this began in 1979, and was concluded -- up to the point I've just told you, long before there was any drug bust in August of 1980. You know who else knows this besides me? They do. But they don't want you to see it.

MR. WEINGARTEN: Excuse me, Judge. Mr. Fawer was objecting to arguing. If that's not argument, I've never heard argument.

THE COURT: Proceed.

MR. FAWER: Thank you.

BY MR. FAWER:

All of it occurred before August of 1980. Before there was any drug bust, before Drew Fairchild was in any trouble. In fact, Drew Fairchild, who is, at that time something about in his 50's, his father were not even on speaking terms as you will hear during that period of time. Don't take my words for it. The witnesses is where the evidence will come from.

Let's talk about what happened in mid-80. In mid-1980 there was a drug bust, just as Mr. Weingarten described it. There was no publicity, by the way, concerning Drew's involvement, none whatsoever. But there was some suspicion that focused on him. He did get an attorney, he did go up to Jackson, and he did, with his attorney, speak to George Phillips. All of this, unbeknownst to anyone else, including Judge Nixon. There would have been no one who would have known a thing about this, there was no publicity, so the only ones who know it are the attorney, Drew Fairchild, and the people on the federal level with whom he's dealing, namely George Phillips and his associat, assistant, Jim Tucker.

And on November 19th of 1980 a Memorandum of Understanding is drawn up. You will see it, it is in effect an agreement. Not a tentative agreement, an agreement. There are conditions to it, but it's a firm agreement. You will hear Drew Fairchild testify about it. What's the deal? Say deal, that's how you talk about it. The government and Drew Fairchild cut a deal, nothing wrong in it

It was a good deal from Drew's point of view. He cooperates and tells whatever he knows about this case, testify if need be, and he will get a suspended sentence, never spend a day in jail, be on probation five years and pay five thousand dollars fine. Let me tell you that's a sweet, nice deal. That's the deal that's signed off on on November 19th by George Phillips, William Porter, Drew Fairchild. There is nothing in any court. There is no need to be; there will be a plea entered at some point down the road. That's what the federal government has agreed to. That's what George Phillips has agreed to.

There is nothing before Judge Nixon, Judge Nixon knows nothing about Drew's problem, nor did he know anything about its resolution.

By the way, the problem arose here in Hattiesburg; the Judge basically spends most of his time in Biloxi.

There will not be a single witness from this witness stand who will suggest to you that the Judge had any idea of any problem that Drew Fairchild had at this point for any resolution of his problem.

Picking up with the -- see, it's nice if you want to take these two different tracks. But the two different tracks Mr. Weingarten talks about really need to be brought together so you can look at them and see one has absolutely nothing to do with the other. You will see it as the evidence unfolds.

In late 1980, into early 1981, the Judge, Judge Nixon, has been told by Carroll Carroll Ingram about the wells, and that it's all effective, it's all done. He hasn't gotten the documents. He's asking Carroll, where are the papers, where are the notes I can sign? February 25th, 1981, which is a set date, no question that's the date on which it occurs, Carroll Ingram gets a package, without the slightest idea, he gets a package sent over from Wiley Fairchild's office. Judge Nixon doesn't know he has this. Carroll gets it in an envelope. You'll hear him testify about it. He gets an envelope in which there are three deeds. One for the Marion

County well, one for, called the Ross well. One for the Covington well, which is the Rogers well, and one for the Mobile County well, which is the Wilkie well. Those are the names of the three wells. Dated, each of the documents is dated February 25, 81, and it's assigned a fractional interest, overriding royalty interest of one acre in each of these wells. You'll learn a little more later on -- not terribly important -- as to how you calculate, I have a feeling some of you have some understanding. You'll hear what you need to know as we go along.

Carroll looks at it, pulls out his notes from the drawer, says there is a mistake, it shouldn't be one acre for each of these, what Wiley had told him earlier, there was three, three, and five. Still fractional parts, but he had that information. Secondly, wait a minute, this is dated February 25, 1981. This deal had really been effected, we had all agreed to this, Judge Nixon had agreed to it; parts that were really assigned goes back until almost a year now, that's when it should be. Calls Wiley Fairchild up. Doesn't call Judge Nixon, there is no discussions, whatsoever. Calls Wiley Fairchild up; tells him about the error. Wiley said, he said to Wiley, look, you don't want -- wells increase or decrease in value depending upon the value of oil, or the productivity of the well. These wells as such were not on line at the time. We'll come to that later.

He says we really ought to have -- the dates of this should be back when we agreed to it. By the way, you will hear in the law, there is nothing wrong with backdating an instrument as was done in this case. He tells Wiley about the dates, approximately when this came about, and to change the acreage. Wiley Fairchild says you're right, calls the person into an office named Skip Jarvis, remember the name. Skip Jarvis, who is somebody, related by marriage to Wiley Fairchild, he was acting as an employee in the office, he tells Skip to do just what Carroll and he had just discussed, change the date, change the date, put the date back a year, and correct the acreage. Skip Jarvis does just that and dates it exactly a year earlier. He chooses to -- just changing the 1981 to 1980, new deeds are typed up, sent over to Carroll Ingram, and that's it. At that point Carroll, from his own information, types up or has his secretary type up the three notes.

And it was he and Wiley Fairchild who described how much each of the -- the cost of each of these which is. One for 4,500, one for 3,000, one for 2,200, which totals 9,500 dollars. Just shy of the ten thousand that Judge Nixon had told them he had to invest. Judge Nixon had nothing to do with picking the wells, deciding how much each would be. That would Carroll Ingram, Wiley Fairchild. Notes are typed up there in Carroll Ingram's office at that time. All that needs to be done is for the notes to be signed by the Judge, and the deeds actually delivered to the Judge.

Remember Skip Jarvis' name, we'll come back to it. You won't hear me say anything about it for a few minutes.

In any event, you will hear something the government doesn't mention, that the $9,500 was absolutely a fair market value for those wells at the time. Not only in February of 81, but clearly in February of 80, as much as in February of 81. Wouldn't have made any difference, that was a fair market value.

What occurs? On his next trip down to Biloxi, Carroll Ingram brings these documents down to the Judge. Judge is pleased, he signs the notes, gives them back to Carroll Ingram, and asks Carroll Ingram -- supposed to be something people are hiding -- to record the deeds in the registry of the courts of each of the three counties. Carroll says fine. You will see the deeds. Right on them it says, Walter L. Nixon. And Carroll takes the deeds back. About a month or two later, next several months, arranges to have the deeds, has the deeds filed in the county record of each of these three counties.

At the same period of time -- by the way, you will hear Judge Nixon -- this isn't the only investments he makes. There are two other investments he makes at or about the same time of a similar nature in oil and gas interests.

You will see this is simply one of two or three investments the judge made because he was, like many of us, seeking to plan for his own and his family's future needs insofar as their schooling and their upbringing was concerned.

Carroll, as I say, went back to Hattiesburg, had the deeds recorded and the wells in fact go on and on. They start producing or at least attempt to produce in the latter part or mid part of 1981 they don't go on all at the same time, but in the latter part of 81 this occurs. The division orders with Judge Nixon's name on the division orders -- some of you may know what they are, some may not. They're orders that officially recognize your fractional interest in the royalty and these division orders were signed with Judge Nixon's name on them and filed like anybody else's division order would be filed. They were filed in early 82.

The three wells went on line in 81, one of them was a bummer, it didn't really produce any oil, the one, I guess in Covington County didn't even return its money. The other two of them did, each of them produced about $25,000 worth of royalty income for a total, say a profit -- up to 85 -- on the investment of 95 hundred, with interest which he repaid, an investment of a little over 10,000, say ten thousand five hundred. He's made a profit of about $50,000 on which he paid taxes, et cetera. But that's the transaction for which he ostensibly sold his soul, according to the government. But --

that's where we are at this point in time. When the checks come in, Judge Nixon's deposits them to his bank and with respect to the payments, he sends the payments, the payments plus the 95 hundred, to Mr. Fairchild, just like anyone else would. At the time he received those deeds, at the time these deeds were back-dated he, Judge Nixon, did not know Drew Fairchild any better than any one of you did. He had never even heard of that human being. There had not been one word of publicity about his involvement at that point in time.

No one was concerned at that point in time about Drew Fairchild. Why? Because he had cut a terrific deal. He was out of the woods as of November of 1980. He had no problems, he had to just cooperate with the federal authorities. By February of 81, three of the people who had been arrested in that drug bust had already plead guilty and had been sentenced by Judge Cox. The only person who had not yet been charged as such were Watkins, the pilot, and of course Drew Fairchild had already made his deal and was going to testify against Watkins if called to do so. Watkins apparently as a fugitive at this time. No one knew this except the people who investigated. That's were things are at this point in time. The person less concerned at that point in time, less concerned is Wiley Fairchild, whose son, who has no great love -- I say no great love, you will hear more about the relationship but it's a man ~~who he hasn't seen him for years, from the time he was born, he~~

hasn't seen him for years, he then sees him again, takes him in, gives him a job and ultimately becomes disenchanted with Drew Fairchild and eventually kicks him out of his office. By August of 79 he's not talking, August of of 79, he's not talking to Drew Fairchild and all of this occurs, including the memorandum of understanding and the plea agreement, without any particular agreement of Wiley Fairchild and in fact in early 81, Wiley Fairchild knows that Drew, black sheep though he may be, he's out of his problems, he's not going to do any jail time and the Fairchild name probably isn't going to be terribly besmirched. Wiley Fairchild up to this point hasn't met Judge Nixon. He asked Carroll Ingram to introduce him, he'd like to meet the man, and Ingram says fine, next time he's in Hattiesburg, I'll bring him over. He does so. They sit down, he has some coffee and they discuss Wiley Fairchild who, you will see, he's supposedly, sort of, -- he's in 70's he has a cryptic way of speaking, he is by no means an unintelligent man, he's not particularly articulate, the judge and he sit down and talk. The judge explains why he's interested in making the investment. He thanks, he thanks Wiley Fairchild for the opportunity to do so. Mr. Wiley Fairchild said he thinks a lot about him, heard about him for years, and he wants to make some investments to help his children. They basically leave one another and the judge says to him, as a matter of thanking him, if I can ever help you, please let me know. If it's something I can do, I'll let you know that. If I can't, I'll simply tell you I can't. That's it. And they leave one another. Wiley says, look, stay in touch. If you're in town, drop by. Give me a call once in a while. The judge says sure, fine. And that's it.

In the summer, we'll jump then, basically nothing happens until the summer of 1981. As far as anybody knew, at least as far as Drew knew, Wiley knew, there was no Drew Fairchild case, it was settled, all done with. In the summer of 81, however, the Forrest County DA, Bud Holmes, called George Phillips regarding what had happened to the Drew Fairchild case. Bud had some egg on his face in other drug prosecutions that had gone awry, the publicity sort of pointed the finger at him, not that he had done anything wrong but there was some criticism about the handling of cases.

Some people had asked him about the Drew Fairchild -- excuse me, what had happened with the case involving the drug bust itself because they knew the DA had nothing to do with it, the drug bust at the Hattiesburg airport. Bud calls George Phillips, who's from Hattiesburg, originally from Hattiesburg, who is now in Jackson, -- you will hear from him, he will be a witness in this case -- and asks him about it and George says well, Drew never really did cooperate and Bud says do you mind if I prosecute what's left of that case? And George says be my ~~guest. Nothing unusual about a federal authority, as Mr.~~

Weingarten has said deferring to the local authority in a case such as this. It happens all the time, particularly in drug cases, and the case is turned over to Bud Holmes. By the way, there is not a scintilla of proof, nor will anyone suggest that the judge had anything to do with it, whatsoever. He knew Bud Holmes, he knew George Phillips, he had never spoken to either one of them about it, neither had Wiley Fairchild said anything about it. For all practical purposes he never hearda of Drew Fairchild at that time.

By August of 1981, Drew indicts, -- excuse me, I'll get my names right in just a minute. Bud Holmes indicts Drew Fairchild and Watkins, the missing pilot, and what you really have at that point is the first time, the beginning of Wiley Fairchild's paranoia, which is understandable, as you can see, but what he is happy about, the Fairchild name has received no adverse publicity at that point. With the indictment on the state level of Drew Fairchild, the name Fairchild is suddenly in the papers concerning a criminal proceeding.

Wiley Fairchild, unsophisticated in the law up until that point, thought the case was over with. I mean, what he knew there had been a deal on the federal level, all of a sudden there's Bud Holmes dragging it out and indicting. He didn't even know that's possible.

Porter, the attorney who had worked out the deal, had sort of assured -- and was a friend of Bud Holmes' --

previously assured Drew and Wiley that the case was over and done with. Obviously, he was wrong.

He's upset at the attorney, who, I say, Porter, who independently had been pressing Wiley for the money that he thought he was owed from the first case. He hadn't really been paid. You will hear something about that in this case. So Wiley has the publicity going on, he's angry at Porter pressing him for dollars, he knows that Porter and Holmes are friends, in fact when Porter dies in a plane crash, Holmes is in that same plane crash two years later. He's upset about the publicity and his family name being besmirched and that's what what is beginning to foment in him.

In January, by January of 1982, the indictment is in August, there's a plea in September, plea of not guilty in September and by January of 1982 they have caught Watkins and Bud Holmes in effect squeezes Porter by telling him, I say squeeze, these are phrases attorneys use, he talks to Porter, makes it clear you can either plead your man and work out a deal, your man Drew, or I will have, we'll have Watkins coming back, Watkins will testify against Drew and Drew will go to jail. You can make your choice. I'm perfectly willing to make the same deal the federal government made; you plead your man, let him testify against Watkins, no jail time, suspended sentence, probation. Fine, it's it, and they agree to it, and he pleads guilty in January of 1982. From January of 1982 until the end of 82 is a series of continuing of the sentences. Why? Two reasons. First of all Drew was about to have a back operation at Oschner, that's one of them. Independently of that, Watkins becomes a fugitive again and they can't get him and they don't want to sentence Drew until they have got the -- they want to get the testimony from him against Watkins before the sentence, because if he's sentenced and they don't have his testimony against Watkins, well, there's nothing, there's no pressure on Drew to testify against Watkins, once he walks away.

So the state keeps putting off the sentence and, through the end of 1982, there's a continuance after continuance after continuance. It's continued six times during that period while Watkins is a fugitive. Each time however there's publicity, each time Wiley Fairchild sees his name in print he is angry about it. I'm sorry for going over this in such detail but I think it's important that you begin to get a feeling of the facts. I don't expect you to recall all of this. As you go through it, but you will see it coming in from different witnesses throughout the trial. We will each have a chance to sum up at the end, don't feel like you have to cram it in now but I'm trying to give you a logical perspective to the events, not picking and choosing, not recalling for your listening pleasure the facts that would support one side or the other. These are all the events and I want you just to see them as they develop.

In any event Wiley Fairchild was upset each time he would see this in the paper. At the end of 1982, tired with the idea of continually bringing Porter into court and Holmes continuing it, they have a method of, what they call in Mississippi, passing the case to the files. It has no meaning, except it in effect puts it on hold. You don't have to keep pulling it back and continuing it, you pass the case to the files and whenever it's ready to come back for action, you just bring it back to the active file.

In December of 1982, the Drew Fairchild case was passed to the files, Watkins was still a fugitive. They had not yet caught him.

Your Honor, could we ask that the heat be turned down a bit? I'm beginning to get very hot, if it's possible.

THE COURT: Do the best you can.

MR. FAWER: I'll try. I'll take my coat off.

In any event, by the end of 82, the case is passed to the files. Why? Watkins has been caught but they're in the middle of an extradition proceeding out of Florida to get him back. They pass the case to the file. It's there for one month, December 23 the order is signed passing the the case to the files, January 25 it's back to the active files. Judge Nixon had absolutely nothing with having that case passed to the files. Not a thing. What they are going to tell you, though, but you will see it's a lie, they have in effect said this conversation that took place before December of 1982, you will see from the facts, that that is not what happened. And in fact you will see that what precipitated Wiley Fairchild talking to Judge Nixon was his anger when the case came back up, came back from the inactive files back on the active status in January 1983. But that theory doesn't sit right for the prosecution because then nothing happened as a result of the conversation.

So they squeeze, as you will see, the witnesses. The witnesses again and again and again have gone on record as saying Nixon had nothing to do with it, until they're squeezed hard enough and the prospect of jail held there so they say that's what occurred.

There's only one trouble with that; you can't rewrite history and there are always facts out there. And the thing called cross-examination, which is like the truth, it's like an anvil on which truth will be forged and you will see when these events occurred and that it occurred, this conversation happened in January -- excuse me, after January of 1983.

What did occur? On January 26 of 1983 the case was passed to the files. In December, Wiley Fairchild, as you will hear Carroll Ingram tell you, and in fact Wiley will tell you, he was ecstatic in his mind as a layman, somebody not sophisticated in law, he thought the case was all over with.

after this yo-yo like thing and his name having been passed back and forth in the papers, it's gone. January 25, 1983 what happens? It's back on file on the motion of the district attorney's office, Bud Holmes, because Watkins is in court that day he's rearraigned and the Fairchild case is on the docket again and they're now setting Watkins' case for trial so Fairchild can testify in the case. Fairchild, Wiley, is basically beside himself, because of the publicity he has no understanding of what happens, he's basically a volatile individual, he's convinced -- and you will hear this from his own lips and from tape recordings made of him -- that Holmes was trying to shake him down and, in his own terms, this is his own language, was blackmailing him. He even believed in his own way that Carroll Ingram was involved in blackmail, that Holmes and Ingram in some way were blackmailing him and shaking him down.

Now throughout this period, we are up to early 83, Judge Nixon on occasion called to say hello to Wiley Fairchild when he would come through Hattiesburg. Hattiesburg is basically the hub of this state, at least the southern part, if you're going to Jackson you come through Hattiesburg, you go to Meridian, you come through Hattiesburg, Vicksburg to the coast, through Hattiesburg or vice versa. On occasion when Walter Nixon would be in Hattiesburg, was sitting here, he would drop in, give Wiley Fairchild a call, have a cup of coffee. In fact, Wiley even mentioned to him about the idea of getting him involved in a second investment, oil and gas investment. Nothing ever came of it, but they were talking about it. Wiley broached the subject.

On this occasion in 1983, Nixon and Wiley Fairchild were in Wiley's office, Wiley knew Nixon, and Nixon knew Holmes. He was upset at Holmes about the shake-down and he complains to the Judge that Holmes and Ingram were shaking him down. That's blackmail, those are the terms he uses. There was no complaint about Drew's case, no request that anything be done on Drew's behalf. What was killing Wiley was this publicity and he viewed that publicity as a shake-down of him by Holmes. Distorted though his reality was, that's what he believed, and he is complaining to Judge Nixon about that. Frankly Judge Nixon is sitting there, Wiley's a difficult person to understand the way he speaks, that's not a criticism, it's just a fact, and Judge Nixon doesn't exactly know what he's talking about. He's heard of Drew Fairchild indictment in the state court but just had heard about it. It's the first inkling he had about it, he knew nothing more, and he's been told something about some shake-down by Bud Holmes and what Wiley simply asked him to do, would he mention it to Holmes. Judge Nixon leaves upset that somebody's accusing his friend, who's the district attorney of a shake-down, of blackmail and Carroll Ingram blackmailing him, two people. He has no reason to believe he has anything to do. Carroll is the lawyer to Wiley Fairchild. Carroll will tell you that's what Wiley was saying about him.

And he doesn't understand it. He had had plans to see Bud Holmes that night or the next night while he was in Hattiesburg. He goes out to Bud Holmes' farm, he was going out to see him because he wanted to pick up some Hank Williams records that Bud had in a collection. He goes out there, they are sitting around like two friends having a drink in a den. And Judge Nixon mentioned to Bud just what Wiley had said, that there is a man out there, Wiley Fairchild is saying that you and -- that you and Carol are shaking him down, and Judge Nixon says, doesn't even understand what's going on. Bud says the old man is paranoid. He thinks everyone is after his money, I have a plea agreement with his son, there is no problem, he's getting no jail time, I'm living up to my plea agreement. There is no shakedown. Wiley is simply nuts.

And without him even asking Judge Nixon, who had gone over to fix himself a drink, Bud Holmes, understanding this, it's characteristic. He's a man who acts before he thinks. He calls Wiley Fairchild, picks up the phone, calls Wiley Fairchild, and assures him there is no problem. And thrust the phone at Walter Nixon, Nixon is given the phone, here, Wiley wants to talk to you. Wiley simply thanks him for having mentioned his fears to Bud Holmes. That's it.

Bud and Walter sit down, have a few more drinks, Bud, Walter leaves with the records and goes home. It's simply -- it's the end of the matter. It's a non-event in the life of the two men. It's a none-event in the life of Wiley Fairchild. It has no, something to hide? Walter Nixon in passing conversation mentioned it to Carroll Ingram, and in fact Bud Holmes had mentioned it to Carroll Ingram in passing conversation. Nobody viewed it as ilicit, meaningful or anything. It was sort of a funny, silly little event. Anybody who knew Wiley Fairchild understood his sort of unusual personality and that he would be somewhat paranoid about that. That was the end of it. This is in early 1983.

But then another strain comes in. Remember Mr. Jarvis, Skip Jarvis? You're going to hear his testimony later today or tomorrow. I think Mr. Weingarten forgot to mention to you a little fact. He talked about it, employee had had some suspicions. Remember that, Skip Jarvis was an employee of Wiley's who had some suspicions about this. Forgot, I'm sure. May have been so ill he forgot this one little fact. Wiley fired Skip. In the spring of 83, kicked him out the door. By the way, Skip Jarvis is related to Wiley Fairchild. Skip's wife is I think a niece or something like that to Wiley. Skip at the time was living, I think originally was living in Florida and Wiley offered him a job, brought him over here, sent him to law school. Paid for his education, then got unhappy with him. You'll most likely -- the only question why did Wiley wait so long, put up with this man for so long.

~~Jarvis is fired and plots to get even with Wiley.~~

Now, that's my word, plot. You see if what he did was not a plot to get even with this man. He was plotting to not only get even with Wiley Fairchild for firing him, but plotting to try, the Fairchild interests, the Fairchild -- I don't want to say empire -- the Fairchild companies are not just owned by Wiley. There is a group of brothers and sisters, each of them have an interest. Jarvis began scheming to take over control if he could from Wiley by bad mouthing Wiley to the brothers and sisters, and on the other hand, to try to take Wiley down the tube in the following way.

He remembered these deeds that he had prepared back in 1981, never had a problem back then, but the deed he had backdated, perfectly legitimately, he will tell you he had backdated dates for Wiley Fairchild before, it was not unusual. But he remembers this. What did he start doing? He starts making annonymous phone calls to the FBI, suggesting that there is a federal judge from the Douthern Sistrict of Mississippi who is being bribed by a wealthy oil man. Absolutely no basis. In fact, he starts calling them annonymously. He doesn't say I have some information and goes in, but he starts feeding them this information, goes on for months. This is not me saying it, the evidence will show it to you. There are tape recordings of this. He slowly is feeding them a story that the sale of the oil wells, of the oil well interests by Wiley to Judge Nixon concerns Drew Fairchild's case. He concocts that.

as you will -- if anything has ever been concocted, he concocts that. Sadly to say -- sad isn't the word for it -- the local FBI bought that story hook, line and sinker. And then turned around and sold it to the headhunters in Washington, D. C. Because you will hear, they turned around and took Jarvis, and Jarvis, allowed himself to have a body mike put on him, so he could secretly record Wiley Fairchild, the man who had in effect supported him for several years, paid for his education, he goes in there, sent in there by the FBI, and told to get this man to incriminate himself, get him to admit the wrongdoing he was involved in.

Jarvis, you know, Dick Tracey of the week, he goes in, he's happy, he's going -- he's going to do the whole number, he's going to bring Wiley down and be able to do something for himself in terms of his financial empire. Wiley, this occurs on April 18 of 1984. Understand something, Wiley had no reason in the world to believe, as you will hear, that Jarvis was bugged. What is the excuse Jarvis used to speak to him? They were really on the outs at this point. Jarvis calls him up, look, I just got a call from the FBI, they want to talk to you about this backdated deed. Wiley in fact knows that make sense. Why? Because the FBI had been to see him a week or so before. So he, Wiley, knew there was something going on. Jarvis comes in, meets him in the office. You're going to have -- you're going to listen to it. See this machine? Thank God they make it. That's called recording equipment. And you're going to have speakers here. You're going to hear Jarvis trying to stick the hook into Wiley and get him to say that there was a bribe, get him to say there was something wrong that occurred. Each time Wiley would answer to that, that would be suggested to him by Jarvis, say what are you, crazy, there was nothing wrong, it was a perfectly legitimate deal, it had nothing to do with Drew Fairchild, what are you talking about? They didn't tell you about that. Sometimes the government forgets certain things.

THE COURT: Mr. Fawer, you've used more than forty-five minutes.

MR. FAWER: Might I have about five minutes?

THE COURT: Yes, sir.

BY MR. FAWER:

I apologize for going over my time. I just want to make sure the jury hears this. Thank you.

In any event, you will hear Wiley categorically cay on April 18, on tape, deny any wrongdoing. Deny it to a mam he had no reason to lie to. Next day, the FBI calls up Walter Nixon, like to come down and see you. FBI calls the Judge, come on down. Without any advance notice, they walk in with Reid Weingarten. There is then 97 pages of interrogation, excuse me, 51 pages on that date, of interrogation. Judge Nixon is incensed because they are talking about, they are suggesting there is some wrongdoing about this oil and gas venture, something he's supposed to have done with Wiley, on Drew Fairchild's behalf. He's frustrated, tell me what I did. Well, we have these -- we can't tell you who has told us these things, you know, we're investigating them to the fullest. They refuse to tell him. He's furious. He answered every question. You'll hear it right on that tape recorder.

They got out of his office. What does he do? He does what anybody would do who is innocent. He calls up everybody who is involved, he calls Carroll Ingram, he calls the head of the FBI, Owen Kennedy, who had set up the interview. He calls George Phillips, he calls Bud Holmes: What's going on, does anyone know what's going on? They don't know.

The grand jury is convened, everybody subpoenaed. The Judge doesn't get subpoenaed, he volunteers to go. He's in there for a hundred pages of grand jury testimony. What he understands is being asked of him, did he influence that case. He's in there denying it, telling them everything he knows. He spends several hours doing so, as I said a hundred pages worth of it. The government unfortunately was hell bent to indict him, a sitting federal judge in the Southern District of Mississippi, and egged on by Jarvis, they weren't going to be set aside. They indicted Wiley Fairchild in September of 1984, for perjury and giving an illegal gratuity. They squeezed the

74 year old man, ultimately he inculpates Judge Nixon, testifying totally contrary to what he said on that tape. You see where he's telling the truth. He says, he says what will be absolutely contradicted by the facts, that Judge Nixon, that this conversation occurred before the case was passed to the files. What the case, what, how that helped anyone, passing the case to the files is beside the point, no one has ever pointed that out to us, told us. You will see he's lying about that.

It is pure and simply a sad man, who at the age that he is, really has little choice of going to jail or telling the story the government wants to hear. Don't take my word for it, listen to the evidence.

Bud Holmes goes back to the grand jury, not just one, not twice; three times. He lies to them apparently. They finally indict him for perjury. At no time did Judge Nixon suggest he tell any story. He chose to do so, Bud Holmes. That's not Judge Nixon's doing. In preparation for his trial, his own trial, he reads what Wiley Fairchild has this time said about that phone call, and he works out a plea agreement, he sees how he can save himself, and what? By saying the same thing Wiley says. So for the first time he now says that he suggested passing the case to the files, at this meeting at the farm that night. He's saying just what the government wants him to say. You'll never guess it, guess who they make a plea bargain with? Bud Holmes. Now they have Bud Holmes and Wiley Fairchild. And you will see how they tried to squeeze Carroll Ingram, in fact did do so, but did not -- was not able to turn his testimony in a way, in any way that's going to help them. You will listen to Carroll's testimony.

Two more minutes and I'm done. What Bud Holmes' story is is a self-serving lie which the facts will contradict. Just wait and see. I can promise you something. Judge Nixon is by no means a Christ like figure. But Bud Holmes is surely a match for Judas Iscariot, and I pity that man. Because he has sold out a friend for himself. But that is human nature, isn't it?

The thrust of the perjury charge is that Walter Nixon lied in denying that he did anything to influence the Drew Fairchild case. Ladies and gentlemen, he was telling the truth in denying his wrongdoing. He did not discuss the Drew Fairchild case with Wiley or Bud Holmes, and he surely did nothing to influence that case. He passed on -- what he did do is when an old man told him he was complaining about blackmail, about Bud Holmes, he passed that message on to Bud. He has never said to Bud, never sought to influence Bud, never really had any talks with Bud Holmes about the Drew Fairchild case. It concerned Wiley's mind, paranoid though they may be. The facts will bear that out.

Remember what I said at the beginning? To lie you must have a motive to lie. Walter Nixon had none. There was no illegal gratuity, and you will conclude that, not because I say it. There was simply a perfectly legitimate arms length transaction with Wiley Fairchild, which the evidence will show had nothing at all to do with Drew Fairchild. The judge did not influence the Drew Fairchild case, and the whole focus of that grand jury investigation was the connection between the oil and gas well transaction and Drew Fairchild. The telephone call to Wiley from the Judge simply was not about that. Nixon did not discuss, the Judge did not discuss or influence the Fairchild case, and therefore he did not commit perjury as your verdict will prove. You'll come to this conclusion when you hear all the evidence. We beg of you, implore you to listen to it all. Listen to the government's witnesses, listen to the cross-examination, listen to our witnesses. The Judge is innocent of any wrongdoing. He has had to sit under this cloud of publicity for eighteen months. We're here now where we have to be. We have every faith that you will acquit him of each and every charge at the end of the trial.

Thank you for bearing with me.

THE COURT: Let's take a short recess. Then we'll have the first witness for the government.

(Recess.)

End end end end end end end end end end end

THE COURT: Proceed, Mr. Weingarten.

MR. WEINGARTEN: Your Honor, the government's first witness will be the Grand Jury foreman. There will be two parts to his testimony, the first part concerns materiality, I understand that part should be outside the presence of the jury, and then Mr. Ward will introduce the testimony before the Grand Jury.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

(Witness sworn.)

THE CLERK: Have a seat.

MR. WEINGARTEN: Thank you, Your Honor.

* * * * * *

DAVID WARD,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WEINGARTEN:

Q. Your name, sir?

A. David Ward.

Q. Where do you live?

A. Meridian, Mississippi.

Q. How are you employed?

A. I'm employed by South Central Bell.

Q. In what capacity?

A. I'm a staff manager.

Q. And how long have you been so employed?

A. I have been employed for South Central Bell right at 20 years.

Q. You also served as a grand juror?

A. Yes, sir.

Q. And where and under what circumstances?

A. It was here in Hattiesburg. It was involving looking into possible public corruption.

Q. All right. Well, when was the Grand Jury summoned, when were you summoned?

A. I was summoned in July of 84.

Q. And where were you summoned to come?

A. Hattiesburg.

Q. And did you receive personally a special assignment?

A. Yes, sir.

Q. And what assignment was that?

A. Foreman.

Q. And who did you receive that assignment from?

A. Judge Parker.

Q. And where is Judge Parker from?

A. He's from Baton Rouge.

Q. What are the duties of a foreman?

A. The way I understood it, I supervised the Grand Jury and kind of, as far as the proceedings, and then carry out any consideration for indictment, I supervised that.

Q. Did you indicate when the Grand Jury was, began service?

A. When?

Q. Yeah.

A. I believe it was July 18.

Q. Of what year?

A. 84.

Q. And have you been in session ever since?

A. Right.

Q. And approximately how often do you meet?

A. Usually once a month.

Q. You alluded to it but generally speaking what has the subject matter of the Grand Jury been?

A. Looking into possible corruption, public corruption in Mississippi, southern district.

Q. Did the Grand Jury consider a drug bust that occurred at the Hattiesburg airport in 1980?

A. Yes.

Q. And in what context?

A. Looking into how it was handled, what it amounted to.

Q. Did a man named Wiley Fairchild testify?

A. Yes, he did.

Q. Approximately when?

A. He testified in July.

Q. Early on?

A. Early. One of the first witnesses, I believe.

Q. In general terms how did Wiley Fairchild fit into the investigation of the Drew Fairchild case?

A. Well, Wiley, of course is Drew's father and so we were actually looking into how, if he possibly had any conversations with anyone concerning how his son's case might be handled.

Q. Did the Grand Jury consider any relationship between Wiley Fairchild and Judge Nixon?

A. Yes.

Q. Did the Grand Jury consider any financial relationship between the two men?

A. Yes.

Q. Did the Grand Jury consider the propriety of that financial relationship?

A. Yes.

Q. And did the Grand Jury consider whether or not that financial relationship had any relationship with the handling of Drew Fairchild's case?

A. Yes.

Q. Did the Grand Jury come to now Bud Holmes?

A. Yes.

Q. How did he fit in the case?

A. He was DA for Forrest County at the time, I believe he served, seemed like, early 80 to 84, so he was DA at the time so we were looking at how he was involved in handling the Drew Fairchild case, too.

Q. Did the Grand Jury consider whether or not there was a relationship between Judge Nixon and Bud Holmes?

A. Yes.

Q. Did the Grand Jury consider whether or not there was a relationship with how how the case was ultimately handled?

A. Yes.

Q. Did the Grand Jury make inquiry as to whether or not Judge Nixon and Wiley Fairchild discussed the Drew Fairchild case?

A. Yes.

Q. Did the Grand Jury make inquiry into whether or not they had discussed the case?

A. Yes.

Q. Did the Grand Jury ever discuss whether or not Judge Nixon ever attempted to influence the handling of the Drew Fairchild case on any level?

A. Yes.

Q. Did Judge Nixon testify before the Grand Jury?

A. Yes, he did.

Q. When was that?

A. That was in our first meeting too, in July.

Q. The Grand Jury was in session at the time?

A. Right.

Q. You were the foreman?

A. Yes.

Q. Judge Nixon appeared?

A. Yes.

Q. Was he sworn in?

A. Yes, he was.

MR. WEINGARTEN: Your Honor, for the purposes of this hearing, why don't we make this government Exhibit No. 1 and show it to defense counsel? Offer it into evidence as Exhibit No. 1 on materiality hearing. I would like to take it back because it will be a Government's Exhibit at trial as well.

THE COURT: Government's Exhibit 1 may be received in evidence.

(Exhibit No. 1 marked.)

MR. WEINGARTEN: Thank you, Your Honor.

BY MR. WEINGARTEN:

Q. At the time Judge Nixon testified in July 1984, did the Grand Jury have any evidence that in fact contact between Judge Nixon and Wiley Fairchild and Bud Holmes about the handling of the Drew Fairchild case?

A. Well, at that time we didn't know a whole lot of what was going on. That was when we were first put in and so we were just getting kicked off about the time, I guess, that --

Q. So the answer would be yes or no? Did the Grand Jury know at the time Judge Nixon testified that there may have been contact among those men about the case?

A. I don't know that we knew it at that particular time.

Q. Did the Grand Jury come to know it later?

A. Right.

Q. Was there evidence later that Judge Nixon did have contact with Wiley Fairchild and Bud Holmes about the handling of the Drew Fairchild case?

A. Yes, there was.

MR. WEINGARTEN: Your witness.

CROSS-EXAMINATION

BY MR. FAWER:

Q. It's Mr. Wall?

A. Ward, W-A-R-D.

Q. Mr. Ward, I'm Mike Fawer, I represent Judge Nixon. We have never met. Right?

A. Right.

Q. Let me see if I understand. You were summoned in July and your first day of jury service was July 18?

A. I believe that's right.

Q. And the first witness I believe of any moment was Wiley Fairchild. Is that correct?

A. If he wasn't first, he was close, I don't remember exactly how.

Q. Take my word for it he was first of the people we are talking about and his testimony was interrupted, was it not, so Judge Nixon could appear that same day. Do you recall that?

A. Seemed like Judge Nixon was on vacation at that time.

Q. And volunteered to come back and speak before you?

A. Right.

Q. And you allowed that to happen and continued to speak with Wiley Fairchild. Is that right?

A. Right.

Q. Could you tell us what it was at that point in time, your investigation is first beginning. Correct?

A. Right.

Q. And as I understand it, there's something about a financial transaction between Wiley Fairchild and Judge Nixon that you're focusing in on. Correct?

A. Right.

Q. I say focusing in, had you been made aware of the deeds and the oil and gas investment by Judge Nixon at that point?

A. I can't really remember if it was right at that particular point or not, to tell you the truth. If we knew in that first, I don't know if it was before he appeared really that we understood that, but it was early.

Q. Excuse me. Do you recall that that was the subject of the questioning of Wiley Fairchild when he first came forward?

A. Right.

Q. Right?

A. Right.

Q. And since he appeared just before junction Nixon what you were focusing in was the investment in these three wells. Do you remember that?

A. Right.

Q. And that was what was of concern as to whether or not the wells, that investment, was in any way improper in terms of the misuse of judges nicks son's office. You recall that?

A. Right.

Q. You had been advised it I take it or you knew about Drew Fairchild, the son of Wiley, having some case that went from the federal to the state court?

A. Right, we were advised of that.

Q. Is it fair to say when you were questioning Wiley, when I say you, the government attorney, Mr. Weingarten, --

A. Right.

Q. -- questioned Judge Nixon, -- could I just have the -- as I recall it's a hundred pages of testimony, the thrust of this Government's Exhibit 1, everything was focused on whether there was anything wrong in that transaction, whether he had used any influence in exchange for getting those oil and gas investments?

A. That was the main focus to begin with. I would say that, of course, other things came into play, but as far as the early beginning, we were focusing in on these transactions.

Q. So you understand, Mr. Ward, I'm not interested in what happened one minute at this point, what happened one minute after Walter Nixon walked out of that Grand Jury room.

A. Okay.

Q. Which is late on the day on July 18. I'm only interested in what was in the jury, what the jury was thinking about at the time he testified. Okay?

A. Okay.

Q. Is it fair to say that the whole focus was whether or not he had improperly used any influence on the Drew Fairchild case?

A. Yes.

Q. And one thing you knew is that he had had a business transaction with Wiley Fairchild?

A. That's correct.

Q. Is that correct?

A. Right.

Q. And it's also correct that he knew nothing about any telephone, let's just use that as a phrase, telephone conversation -- Let me withdraw that.

You knew nothing about at that time about a conversation between Wiley Fairchild and Judge Nixon concerning Wiley's fears of being shaken down or blackmailed by Bud Holmes and Carroll Ingram?

A. We hadn't heard anything.

Q. And you knew nothing at that time of any conversation at Bud's farm between the Judge and Bud Holmes. Correct?

A. Not at that particular time, no, sir.

Q. Okay. And you knew nothing about a phone call then that went from the farm to Wiley Fairchild. Is that correct?

A. That's correct.

Q. And am I correct that subsequently in the late fall or mid fall of 1984, you learned of that phone call from some witness. Correct?

A. That's right.

Q. From whom?

A. Well, we of course we heard it from Wiley.

Q. In November of 1984. Right?

A. That's possible because we indicted, I believe we indicted Wiley in September.

Q. And you didn't know about it then?

A. And -- That's right.

Q. When you learned of it, apparently you questioned Wiley about it in the Grand Jury. Correct?

A. Right.

Q. And you specifically questioned Bud Holmes about it in the Grand Jury?

A. Bud Holmes, that's correct.

Q. And you questioned indirectly Carroll Ingram about it in the Grand Jury?

A. That's correct.

Q. Because he had heard something about it?

A. That's correct.

Q. Could you tell His Honor, by the way as foreman of the

Grand Jury you know you have the power of subpoena, do you not?

A. Right.

Q. You can bring people in to question?

A. Right.

Q. They can exercise size their right to take the privilege not to testify but you can call them back and give them a subpoena and ask that they testify. Right?

A. I might mention along those lines now, I'm just like the average citizen as far as the law or what have you, I don't have a whole lot of understanding, if you want to talk telephones, I can, but when I was first subpoenaed and assigned as foreman of the jury, at that time I knew very little about --

Q. I understand. --

A. -- proceedings but, as time went on and when I was appointed by Judge Parker, I mentioned to him then I didn't know anything but I certainly would be asking questions and I would do what I could.

Q. Sure. Which is what --

A. But which is early but I learned fairly soon that I did have that, the power or that was part of my duty as the foreman, that I could cause a subpoena or interrupt proceedings during the Grand Jury session, if I thought something was out of hand or something like that.

Q. And as you say it's not something you came to realize on July 18?

A. Right.

Q. But as the days, you met in late July, met again in September and took some testimony?

A. Right.

Q. Returned an indictment against Wiley Fairchild at that time?

A. That's correct.

Q. You met again in November. Each time you're getting a little more comfortable with your role?

A. Right. That's correct.

Q. And in November there are specific questions by yourself, I say yourself, by the grand jurors?

A. Right.

Q. And of course by Mr. Weingarten about these three conversations, these three talks that we are focusing in on?

A. Right.

Q. Let's just refer to them as the telephone call?

A. Right.

Q. I'm just using that as a pigeon hole to describe the incident. Okay?

A. Okay.

Q. You questioned, Wiley had not been questioned about it back on July 18, because you knew nothing about it?

A. Right.

Q. Or July 19 when he came back the next day. Is that correct?

A. Right. That's correct.

Q. Nobody gets questioned about it until Wiley's questioned specifically about it on November 28, when he comes back to the Grand Jury. Correct?

A. I believe that's right.

Q. Take my dates as being factually accurate. If you have a different recollection, though, tell me.

A. All right.

Q. There are specific questions if not by the jury but by Mr. Weingarten about that?

A. That's correct.

Q. If I understand correctly early on, since you didn't know anything about the phone call, there would not be any direct questions about the incident. Correct?

A. That's correct.

Q. So now you're questioning him and he tells you what he knows about it. Correct?

A. Right.

Q. Of course you have already been told there's been a plea bargain with Wiley Fairchild by then?

A. That's right.

Q. And then we have Bud Holmes. Correct?

A. That's correct.

Q. And Bud Holmes comes back and even without a plea bargain on February 5 -- excuse me February 21, I believe it is, he's questioned about that same phone call. Correct?

A. Right.

Q. Okay. And of course you couldn't question him about the same matter back in July when he first testified, because you didn't know about it?

A. That's correct.

Q. So you question him, it's only fair that you question him about that phone call. Correct?

A. That's correct.

Q. I mean I just used the phrase it's only fair because you want to be able to ask him precisely to get him on record about the phone call. Right?

A. Right. We wanted to know everything pertaining to that phone call, of course. That was exactly what we were looking into.

Q. Okay. And Carroll Ingram indirectly, he had a fair amount to do with the oil and gas venture but he also indirectly heard about the phone call and you questioned him. Correct?

A. That's correct.

Q. I take it Mr. Weingarten told you when he came back and testified that he had been assured that he would now only be a fact witness, he was no longer a target of any investigation. Correct?

A. I believe that's correct.

Q. Okay.

A. We had three or four and I believe he was one of them.

Q. So now we have three people who know something about it that are specifically questioned. Who else, putting aside, you got Wiley, Carroll, Bud, each are given a chance to come back and are questioned about it. Right?

A. Right.

Q. Bud's even brought back again in June of 1985. Correct?

A. He was brought back again. He's been before us four, I believe that's right, four times.

Q. Okay. The last time, a little different because he's now entered into a plea agreement. Right?

A. Right.

Q. And he's pled to a charge of contempt, I think it is, basically to having committed perjury before you. Right?

A. Right.

Q. And he now is testifying again for the second time about the phone call. Correct?

A. Right.

Q. And he tells a different story. Correct?

A. Right.

Q. You had the power of subpoena. Right?

A. Right.

Q. You had never questioned at any point in time the gentleman sitting here about the phone call?

A. No, we never questioned him.

Q. You had the power of subpoena, the man that appeared before you voluntarily in July. Right?

A. Right.

Q. He never had been asked a question about it?

A. (Nods yes.)

Q. Could you tell His Honor why you never issued a subpoena and said let's hear his version of it?

A. Well, to tell you the truth, I just assumed that he was asked. Well, he had the chance to volunteer to come and speak to us to begin with and as far as I was concerned or the jury, he could come back at any time because he, I feel like he pretty well knew what the investigation consisted of and what we were looking for. But as far as actually, it never crossed my mind to subpoena him. I felt like he had an open invitation. He could come back any time.

Q. By the way, you were sworn not to reveal what goes on in the grand jury, am I correct?

A. That's correct.

Q. Every attorney is sworn not to reveal what goes on, correct?

A. Right.

Q. The court reporter is sworn not to reveal what goes on, right?

A. Right.

Q. But you knew that what -- you knew, regardless of the reason, I'm not finding fault, Judge Nixon had never been confronted at any time under oath with specific questions about the phone call incident, correct?

A. Right, I knew that.

Q. Okay. And you also knew that the focus of your entire questioning when he first came before you was whether or not he had taken or bought these oil and gas interests in exchange for using his influence on the Drew Fairchild case, correct?

A. Right, that's correct.

Q. And as you sit here today -- I withdraw that. And he answered the questions again and again, they were put to him from seven different angles, using that -- from every angle conceivable in terms of the use of his influence, correct?

A. Right.

Q. Am I correct about that?

A. That's correct.

Q. And is it fair to say as you sit here today you don't -- I withdraw that. He answered all those questions, correct, about the use of his influence?

A. In some way or another he did.

Q. He didn't refuse to answer a single question?

A. He -- it pretty well had to be drug out of him, you might say.

Q. There is the document. There is 97 pages. Point to the dragging out?

A. This may take a little while.

Q. You testified it had to be dragged out of him. I think he --

THE COURT: Let's go on.

BY MR. FAWER:

Q. Can you point to any spot where it was dragged out of him?

A. When I say -- I might need to clarify that.

THE COURT: This is just a hearing on materiality. We're wasting a lot of time on things that have nothing to do with materiality.

THE WITNESS: I might clarify that. I don't know if I used the right language. Because I remember Judge Nixon's testimony fairly well, and during that time, had I have known that I had the power to interrupt proceedings and make a statement to the witness as to how to conduct his answers to the questions, I would have done so during the questioning of

Judge Nixon, because it appeared at the time that he was -- he would, I don't know if you would say cloud the issue, but he'd talk about some things that really we weren't interested in hearing and didn't need to hear.

BY MR. FAWER:

Q. Did you tell him what you needed to hear?

A. Pardon?

Q. Were you telling him what you needed to hear?

A. As far as the question, the questions that were posed seemed real precise to me.

Q. Okay.

A. There shouldn't have been any question as to what kind of answer --

Q. So precise, there was not a single question about the telephone call, correct?

A. That's right. We didn't know anything about it, that's right.

Q. And you chose -- did the government ever suggest bringing Judge Nixon back?

A. They never suggested bringing him back.

Q. At any time from July 18th, when did you -- did you ever out of existence? Are you still in existence?

A. Still in existence.

Q. To the minute you sit on the stand, let's be more realistic. Between the date of July 18th and August of 1985 when Judge Nixon was indicted, did any member of the government ever suggest bringing Judge Nixon back and asking him a direct question about the phone call incident?

A. No, sir, I don't remember.

MR. FAWER: No further questions.

MR. WEINGARTEN: We have no redirect. Does the Court want argument?

THE COURT: Is that the end of your testimony?

MR. WEINGARTEN: On materiality, yes. That's our presentation on materiality.

THE COURT: The Court finds that the questions which the grand jury asked Judge Nixon were material to their investigation.

MR. FAWER: Judge, may we just, we have not subpoenaed Mr. Ward. I would just like to have him kept under subpoena. We will be back in touch with him whether we need him for the actual defense portion of the case.

MR. WEINGARTEN: Let's put him on right now to introduce the transcript.

MR. FAWER: If he's going to be put on right now, Judge, to introduce the transcript.

THE COURT: You want the jury to hear his presentation?

MR. WEINGARTEN: Yeah.

THE COURT: All right. Bring the jury in.

(Jury enters.)

MR. WEINGARTEN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. WEINGARTEN:

Q. Your name, sir?

A. David Ward.

Q. Spell your last name, please?

A. W-A-R-D.

Q. Where do you live?

A. Meridian, Mississippi.

Q. How long have you lived there?

A. I lived there approximately eight years.

Q. How are you currently employed?

A. South Central Bell.

Q. What capacity?

A. Staff manager.

Q. In the briefest of terms, what does that mean?

A. Mississippi is made up of seven districts. As far as South Central Bell is concerned, one district headquarters being in Meridian, and I'm on the staff, or I am the staff as far as supporting the field forces that handle installation, maintenance on telephones, telephone lines, also engineering and construction of telephone lines. I assist the field forces in carrying out those duties.

Q. Okay. Did there come a time in 1984 when you were summonsed to serve as a grand juror?

A. Yes.

Q. When was that?

A. That was in July of 84.

Q. And where were you summonsed to?

A. Hattiesburg.

Q. And what happened when you got here?

A. Well, got here and everybody, I guess must have been 65 or 70, and everybody's name was put in a hat, and they drew out 23 names. I happened to be one of the 23.

Q. Were you -- did you receive a special assignment?

A. Right, I was assigned to be the foreman of the grand jury by Judge Parker, who is from Baton Rouge, Louisiana.

Q. And did you learn about the duties that you would hold as foreman of the grand jury?

A. Right.

Q. What are those duties?

A. Kind of supervise the proceedings and also, of course I would swear in or render the oath to the witnesses as they come in, and then any time any indictments was given to us for consideration, then I would supervise that and lead in that.

Q. Has the grand jury been in session ever since?

A. Yes.

Q. About how often do you meet?

A. Roughly once a month.

Q. Did the grand jury consider any evidence relating to a drug bust at Hattiesburg Airport in 1980?

A. Yes, we did.

Q. In connection with that case, were witnesses subpoenaed?

A. Yes.

Q. And did witnesses appear and testify?

A. Yes.

Q. Was the grand jury in session on July 18, 1984?

A. Yes, sir.

MR. WEINGARTEN: At this point, Your Honor, I would like to introduce into the record Stipulation No. 1. I'd like to read it to the jury.

THE COURT: Very well.

MR. WEINGARTEN: It is hereby stipulated and agreed between the parties that on July 18, 1984, a grand jury of the United States District Court for the Southern District of Mississippi was duly and properly convened and that the defendant, Walter L. Nixon, Jr., was duly and properly sworn when he testified before that body on July 18, 1984. Stipulated and agreed, 28th day of January, 1986. Signed by the parties. Stipulation No. 1.

BY MR. WEINGARTEN:

Q. Just so we're clear, the grand jury was in session July 18, 1984?

A. Yes, sir.

Q. You were the foreman at that time?

A. Right.

Q. And did Judge Nixon appear as a witness?

A. Yes, he did.

Q. Was he sworn?

A. Yes.

Q. And was he given the oath?

A. Yes.

Q. All right. Could you take a look at Government Exhibit No. 1?

MR. WEINGARTEN: At this time I'd like to read into the record. Stipulated and agreed between the parties that the original transcript of the testimony of the defendant, Walter L. Nixon, Jr., taken on July 18, 1984 before the grand jury of the United States District Court for the Southern District of Mississippi, which transcript was prepared by Dale N. Milford, Official Court Reporter of that grand jury, and which transcript is offered as a Government Exhibit in the trial of this case, is a true and correct record of the proceedings held on that date and fairly and accurately records the questions posed and the answers given at that proceeding. Stipulated and agreed to this 28th day of January, 1986.

BY MR. WEINGARTEN:

Q. Mr. Ward, you have before you Government Exhibit No. 1. Identify that, please?

A. It's the transcript of the testimony of Judge Walter Nixon on Wednesday, July 18, 1984.

MR. WEINGARTEN: We move Government Exhibit No. 1 into evidence.

MR. FANER: No objection, Your Honor.

(Exhibit G-1 marked.)

BY MR. WEINGARTEN:

Q. Did you personally give Judge Nixon the oath, sir?

A. Yes, sir.

Q. Would you turn to Page 2. Do you find that oath in the transcript?

A. Right.

Q. Would you read that oath to the ladies and gentlemen of this jury?

A. Do you solemly swear that the testimony you are about to give in this cause pending before this grand jury will be the truth, the whole truth, and nothing but the truth, so help you God.

Q. And what was the witness's answer?

A. I do, ladies and gentlemen, nods to grand jury.

Q. Okay. In the course of Judge Nixon's testimony in the grand jury on that day, was he asked any questions about his involvement with the Drew Fairchild case?

A. Yes, he was.

Q. And more specifically, I ask that you turn to Page 50 of the transcript. Ask you to start reading on line 9 and stop reading on line 19?

A. "Question: Did Wiley Fairchild ever discuss the case with you?

"Answer: No, not to the best of my recollection. I think I would recall that if he had, believe me. But I don't recall that he ever did.

"Question: And accepting your answer as you state it, I need to ask a follow up question.

"Answer: Very well.

"Question: Did Wiley Fairchild ever ask you to do anything vis a vis his son's case?"

Q. Okay.

MR. FAWER: Wait a minute.

MR. WEINGARTEN: I'm sorry. Did you read the answer to that?

THE WITNESS: "Answer: Absolutely not."

BY MR. WEINGARTEN:

Q. I beg your pardon, Mr. Ward. I'm sorry. Please turn to Page 47. Please start reading on line 19, and please finish on line 3 of Page 48.

A. "Question: The grand jury has heard evidence that the prosecutor, the state prosecutor who eventually handled the case was an individual named Bud Holmes. Is he a friend every yours?

"Answer: Very good friend of mine, long time friend, yes.

"Question: Did he ever discuss the Drew Fairchild case with you?

"Answer: No, not to the best of my recollection. I think I would recall if he had.

Q. All right, Mr. Ward, I ask you that turn to Page 75. At any point in time was Judge Nixon asked if he had anything he wanted to add?

A. Right.

Q. And how did he respond?

A. He had something he wanted to add.

Q. All right. Please start reading on Page 75, line 14, and conclude on Page 77, line 11?

A. That's Page 77, line --?

Q. Start on 75, Page 75 line 14. And go to Page 77, line 11?

A. "Mr. Weingarten: All right, Judge. Do you have anything you want to add?

"The witness: Yes, I do. I want to say this, I, here are your notes, too. Copies of your instruments, rather. I came here voluntarily and am very happy to cooperate with this grand jury and give them all the information that I have and that I could. And I have always thought everyone should do that, and that goes for the grand jury over which I'm supervising right now, the other federal grand jury that's sitting at this time. I have nothing at all to -- had nothing to hide or nothing to withhold and I brought everything that you have asked me to bring, and I want to say this, that I have been told and led to believe and read in the newspaper and heard on the news media so much about this, this is an investigation of the Drew Fairchild criminal case. Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court. I don't need to reconstruct anything with reference to that. I've told you that from the beginning. I have never talked to anyone about the case, any federal judge or state judge, federal prosecutor or state prosecutor, and I never handled any aspect of this case in federal court. As you said, Judge Cox handled it. I don't know where, someone told me maybe Judge Russell handled one of the other defendants also, and, but I never handled any part of it. Never had a thing to do with it at all, and never talked to anyone, state or federal, prosecutor or judge in any way to influence anybody with respect to this case. Didn't know anything about it until I read that account in the newspaper, didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction. So I want to say that because I understand that's what this is all about, the investigation is apparently, if the news media is correct, and if I understand it correctly, that's what this is about, the Drew Fairchild criminal case.

MR. WEINGARTEN: Thank you, sir. Your witness.

MR. FAWER: May I, Your Honor?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FAWER:

Q. Mr. Ward, I'm Mike Fawer. We met just a few minutes ago, is that correct?

A. Yes, sir.

Q. I represent Judge Nixon.

A. Yes, sir.

Q. Very quickly, let me just ask you a couple questions. Judge Nixon did appear voluntarily that day, is that correct?

A. That's correct.

Q. He appeared there with or without an attorney?

A. I don't remember. Of course no one could have an attorney in the grand jury room, and I don't believe he had one.

Q. Okay. On that date, could you tell the jury, this is the first day of the grand jury sitting in this proceeding, correct?

A. Right.

Q. The first day in fact you had ever sat and the others had ever sat as grand jurors, correct?

A. Correct.

Q. Yourself and 22 others, is that right?

A. That's right.

Q. And at that time, before Judge Nixon appeared, you had had only one witness, namely Wiley Fairchild?

A. Right.

Q. Okay. And is it fair to say that the subject matter of your inquiry at that point was whether or not, well, let me withdraw that. You knew there had been an oil and gas transaction between the Judge and Wiley Fairchild, right?

A. That's right.

Q. And you knew apparently, there was some question about the dating of the deeds on the royalty assignments, right?

A. That's correct.

Q. Okay. And you knew that there was a case called the Drew Fairchild criminal case?

A. Right.

Q. And what you were, focusing in on was the relationship with whether or not the Judge who admitted having this oil and gas transaction?

A. Right.

Q. Whether that was done in exchange for his using his influence in the Drew Fairchild case?

A. That's correct.

Q. Okay. That's where you stood at that point in time when the Judge walked in the room, correct?

A. That's correct.

Q. Nothing else had occurred, although there was many grand jury, many grand jury witnesses who would appear after that, right?

A. That's right.

Q. And do I understand correctly -- let me ask it another way. Judge Nixon described what you just read as his understanding of what the crux of the investigation was, namely, that connection between the oil and gas venture and anything improper that Judge Nixon did in the Drew Fairchild criminal case, correct?

A. That's correct.

Q. And he was questioned, you read what maybe amounts to three or four pages at most out of a 97 page transcript, correct?

A. Right.

Q. And the couple of pages that you read focused on some testimony, but throughout the 97 pages, again and again, from a variety of directions, the same questions were asked, namely, whether he had used his influence in affecting the criminal, the Drew Fairchild criminal case, right?

A. It was a lot of questions, kind of leading toward that, but it covered a lot of areas as far as this transaction, like the dates.

Q. Some background?

A. Right, some background, but that's what it was --

Q. If I interrupt you, please stop me. I'm sorry. Sitting in Judge Nixon's perspective, he accurately described, as you last read it, what he would have believed, what he as a witness in that grand jury would reasonably believe the focus of all these questions are, correct?

A. Right. Of course at that particular time, we didn't know a lot of background. There was to be later a lot of contradictory --

Q. We'll come to that.

A. Okay.

Q. We're talking now -- on the only date he is supposed to have committed giving false testimony?

A. Right.

Q. I take it, if you were sitting as the witness in that grand jury, instead of the foreman, you would have been saying to yourself, they are suggesting that I did something wrong in exchange for getting these oil and gas leases?

A. That's right.

Q. He was vehementally denying having done anything wrong on that level again and again and again, correct?

A. That's correct.

Q. Okay. Now, if I understand it, Wiley Fairchild had appeared earlier the same day and his testimony was interrupted so Judge Nixon, who had flown in for his appearance -- he'd been on vacation for that period of time?

A. Right.

Q. Could be questioned, that's correct?

A. That's correct.

Q. You then went back and finished Wiley Fairchild the next day?

A. Right.

Q. During that same period, July 18 through 20th, you interrogated Bud Holmes?

A. Rights.

Q. You interrogated Carroll Ingram?

A. Correct.

Q. And I think there may have been a number of others. For our purposes let's just limit it to those, okay?

A. Okay.

Q. Tell the jury, at that time of what we refer to as the telephone incident, the conversation between Wiley Fairchild and the Judge and then the Judge and Bud Holmes at the farm and the phone call, which I'm referring to as the telephone incident just to make it easy?

A. Right.

Q. The telephone call incident was unknown to you at that time?

A. That's correct.

Q. As far as you know, unknown to anyone for the government, correct?

A. As far as we knew it was.

Q. Okay. The investigation preceded. You didn't meet every day. After the July meeting I think your next meeting was in early September, correct?

A. I think that's right.

Q. And at that time you called certain people back. Bud Holmes was called back?

A. Right.

Q. And Wiley Fairchild -- Skip Jarvis I think testified, remember him?

A. I remember Skip, sure do.

Q. Okay. And you returned an indictment, correct?

A. Right.

Q. Against whom?

A. Mr. Fairchild, Wiley Fairchild.

Q. So the jury understands, when you say you returned, the grand jury returns an indictment, the practicalities are, of life are, the government attorneys walk in with a piece of paper which they have drawn up; on the top of it it says indictment?

A. Right.

Q. You don't sit down and draft this document?

A. No.

Q. They walk in with it as a finished document, right?

A. That's correct.

Q. All you do to it, they present it to you, they leave the room, you vote, you sign your name, that's called a true bill, am I right?

A. Right.

Q. That's what occurred with Wiley Fairchild?

A. Well, it just didn't -- zap.

Q. I didn't mean it that way. Any indictment gets -- that's the procedure?

A. Right.

Q. The grand jurors don't act as a drafting, they don't have a drafting function?

A. No.

Q. They could, but practicality they don't?

A. Right.

Q. You indicted Wiley?

A. Right.

Q. At the time he was what, 74, 75 years of age, is that right?

A. He was way on up. I don't remember exactly, but I believe he was in his 70's.

Q. Tell the jury, you had heard him testify at some length on July 18th and July 19th. Difficult to understand the man in terms of just the way he has a strange speech pattern, speech pattern makes himself a little hard to understand at times?

A. I didn't really have any trouble understanding him. He was, he didn't talk -- of course people have trouble understanding me sometimes.

Q. I'm doing all right.

A. But I didn't really have any trouble understanding him. You had to listen pretty well close.

Q. Did you have to listen close?

A. Kind of like, sometimes he might respond, you know, when you wouldn't be expecting him to respond, when he might --

Q. Go off on tangents sometimes?

A. He wouldn't necessarily go off on tangents. He was pretty precise. I didn't have any trouble understanding his answers.

Q. In any event, he gets indicted, the next time you meet is November sometime, correct?

A. I believe that's right.

Q. I think it's right that you don't meet -- your meeting in November is a plea agreement has been entered into between Wiley Fairchild and the government, right?

A. I believe that's right. Possibly sometime in November it seems like.

Q. Just before he was to go to trial in December, plea agreement, if he testifies, if he cooperates with the government, the government would make certain recommendations to the judge, right?

A. Right.

Q. To the sentencing judge. By the way, Judge Meredith did not sit as the judge in any of those proceedings so far as you know, right?

A. As far as I know.

Q. Okay. After that, he is called back into the grand jury, right?

A. That's right.

Q. It is at that point for the first time that you ever hear anything about this telephone call incident, right?

A. I believe that's correct.

Q. Okay. And you do something, you and the prosecutors, ask very -- fairly precise questions about the telephone call, and he responds, right?

A. Right.

Q. I mean say about the phone call, about his conversation with the Judge, and then the phone call he receives from the farm, right?

A. Right.

Q. Okay. We then move into 1985, you convene again in February of 1985, correct?

A. Correct.

Q. Bud Holmes is now called back for the third time, right?

A. I don't remember exactly when. It was in February.

Q. February 21?

A. Okay.

Q. Okay. And this though, when he comes back is the first time he's being questioned with you and the prosecutors having knowledge of the telephone call incident, correct?

A. I believe that's right.

Q. And once again, as with Wiley, you questioned him under oath on that phone call?

A. That's correct.

Q. And he gives certain answers?

A. Right.

Q. The result of that, I think you also called in Carroll Ingram. No -- yes, you did. You called in Carroll Ingram, correct?

A. He appeared twice, if I remember right, and that was probably the second time.

Q. Right around that time. I think it was just before Bud Holmes. You did the same thing, you had learned that, you had learned, had you not, that he had some indirect knowledge of the phone call incident?

A. That's correct.

Q. And the government told you that they made an agreement with him that they wouldn't prosecute him, he would only be viewed as a witness in the case, then he comes back to the grand jury?

A. Of course the way that, from my understanding about what the government offers a witness like that, he was told, Carroll Ingram was told he was not the target of the investigation, and that, so they, the government was not seeking to prosecute him, but he was still bound to oath.

Q. Right.

A. That he was to answer every question truthfully.

Q. Right.

A. And if he testified falsely, then he would be considered for indictment.

Q. Right. So as long as he went to the grand jury -- by the way, tell the jury who is it who decides whether somebody commits perjury? Is that the government and the grand jurors?

A. Right.

Q. The defendant has nothing to do with that, correct?

A. He just swears in the oath and then, other than that, he doesn't have a choice as to what he said is --

Q. So it's understood, some human being has to decide where the truth lies, right?

A. Right.

Q. In this case, the government who has the power of making somebody a target, right?

A. Right.

Q. Is the entity, is the person who says, oh, I just heard the truth or I have not just heard the truth?

A. They would present it to us in that way. Of course we would have to decide if we agreed with that.

Q. Fine. In any event, you questioned Carroll Ingram very specifically about the telephone call incident insofar as he heard of it third hand?

A. Right.

Q. Which is, that's the only way he heard about it, right?

A. Right.

Q. Okay. And I take it one thing that comes out of that in March, late March, March 29 of 1985, is another one of these indictments is brought into you by the prosecution, right, for your signature?

A. Right.

Q. Vote and signature. It's an indictment of Bud Holmes for what he just had said to you on February 21st, correct? Perjury indictment?

A. I was thinking maybe it was sometime in March or sometime we indicted Bud Holmes.

Q. That's right. Let me, so you follow me, I don't want to mislead you. You indicted him on March 29th, okay?

A. Okay.

Q. For what he had said in the grand jury on February 21st?

A. Right.

Q. Okay. And of course, on February 21, you told us he was questioned specifically about this telephone call?

A. Right.

Q. Okay. And then comes the perjury indictment. Three months later, he is going to trial, I think, in June, and there's a plea agreement. Correct?

A. Correct.

Q. And he agrees that in exchange for giving certain testimony, he will receive certain consideration in court. Correct?

A. My understanding, if he would cooperate, I don't know what all that, in the investigation, I don't know what all that consisted of, but he would be given consideration or he --

Q. Okay. And he comes back to the Grand Jury, you're called, you know, into session again and I think it's on June 18, 1985, you're there to see Bud Holmes for the fourth appearance. Right?

A. Right.

Q. So they bring in Bud Holmes and in the course of his testimony, he even points out that he had read Wiley Fairchild's Grand Jury testimony. Am I correct? Do you recall that?

A. I don't really recall but it seemed like some of the testimony possibly had gotten out something or other but I don't really know.

Q. Well, he was preparing to go to trial himself. Right?

A. Right.

Q. Part of the pretrial process you get the Grand Jury proceedings?

A. Right.

Q. That ring a bell in your mind?

A. Right.

Q. He read some things that Wiley had said about this telephone call incident. Right?

A. Right.

Q. Now Wiley had already figured out, he had made his plea to the government and he had gone back and testified. Right?

A. Right.

Q. That's the testimony Bud now had and he was now testifying before the Grand Jury. Correct?

A. Correct.

Q. And, in any event, Bud this time, for the second time, was asked precise questions about the telephone call incident. Correct?

A. That's correct.

Q. Okay. Now we have dealt with the four people involved, we have dealt with Wiley, Bud, Carroll and the Judge. Correct?

A. That's right.

Q. All four testified, three of them under subpoena in July of 1984, one of them voluntarily, Judge Nixon, voluntarily?

A. Right.

Q. Nobody knew a thing about the telephone call incident at the time of the initial questioning. Correct?

A. That's correct.

Q. But Wiley was called back and given an opportunity to testify to precise questions about the the telephone call in November of 1985, -- 1984. Correct?

A. That's correct.

Q. Carroll in gram was called back and given an opportunity to be questioned under oath by precisely questioning him about those phone calls. Right?

A. That's right.

Q. He had an opportunity, being confronted with that information as did Wiley, to tell the truth or lie, but he had an opportunity to know precisely what you were asking him about. Right?

A. That's correct.

Q. Bud Holmes was called back two times, in February, February 85 and in June of 85. Correct?

A. Correct.

Q. Tell the jury who was never brought back to the Grand Jury. Tell this jury from your lips of the four we have mentioned, who was never questioned under oath about the telephone call incident?

A. Judge Nixon.

MR. FAWER: No other questions -- Well, I do.

BY MR. FAWER:

Q. Did the government ever suggest to you and I say the government, I mean Reid Weingarten, that the Judge should be brought back and given an opportunity to be asked questions about that precise matter, as you had the other three?

A. There was no statement from them that would lead us to want to call him back. Of course we assumed --

Q. Excuse me if, I may?

A. All right.

Q. With all due respect I'm concerned with what you did and what you heard, not in what you assumed?

A. What I was saying is, we knew that he had volunteered.

Q. He being the Judge?

A. To come. Right.

Q. May I ask you a question?

A. Initially.

Q. I understand this is your first chance as a, on a Grand Jury, particularly as a foreman?

A. Right.

Q. The greatest power that a Grand Jury has, is the power of subpoena. Right?

A. That's correct.

Q. It can be issued to anyone, including the president of the United States?

A. That's correct.

Q. And that individual must come into court, into the Grand Jury room and in the privacy without an attorney, either testify under oath truthfully or claim a privilege not to testify. Correct?

A. That's correct.

Q. You may not have known all that on July, when the Judge appeared voluntarily, but within the next several months you learned that. Correct?

A. That's correct.

Q. You had this power of subpoena, you didn't need to use it the first time because he came voluntarily?

A. Right.

Q. Did you or anyone for the government ever suggest the issuance of a subpoena so that Judge Nixon could be asked questions, precise questions about which he had never been asked the precise questions in July of 1984?

A. No, sir.

MR. FAWER: Thank you. I have no other questions.

REDIRECT EXAMINATION

BY MR. WEINGARTEN:

Q. Just a few, Mr. Ward. Had Judge Nixon made contact with you or the Grand Jury and requested an opportunity to reappear before the Grand Jury, what would your response have been?

A. We would have let him come. We would have heard from him again.

Q. Do you recall whether or not there was a interview tape played before the Grand Jury with Judge Nixon's conversations with the Department of Justice and the FBI?

A. I remember such a tape. I don't remember everything on it but I remember the tape.

MR. WEINGARTEN: Thank you, sir.

MR. FAWER: May I add on that last subject matter?

RECROSS-EXAMINATION

BY MR. WEINGARTEN:

Q. You do recall that tape, of an interview with the FBI, voluntarily given, had occurred back in April of 1984, two months before he appeared, three months I guess, April May, June and July, almost three months to the day before he appeared before you?

A. I didn't know exactly when it was.

MR. FAWER: No other questions.

THE COURT: Are you through with the witness?

MR. FAWER: Yes.

THE COURT: Thank you, sir. Call your next witness.

(Witness excused.)

MS. LITTLE: Drew Fairchild.

(Witness sworn.)

* * * * * *

REDDIT ANDREW FAIRCHILD,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LITTLE:

Q. Would you state your name, please?

A. Reddit Andrew Fairchild.

Q. Mr. Fairchild, do you have a nickname?

A. Yes, ma'am. They call me Drew.

Q. Where do you live?

A. 1215 Windsor Drive, Hattiesburg, Mississippi.

Q. How old are you?

A. 52.

Q. What is your educational background?

A. I finished the eighth grade.

Q. Do you have a family?

A. Yes, ma'am, I do; a wife, two daughters and a son.

Q. How old are your children?

A. 30, 27 and 19.

Q. Are you employed?

A. Yes, ma'am.

Q. Where do you work?

A. W. R. Fairchild Construction Company.

Q. And is that a business run by a member of your family?

A. By my father, Wiley Fairchild.

Q. What do you do at W. R. Fairchild Construction?

A. I work in the oil department.

Q. I'm sorry?

A. I work in the oil department.

Q. What is your job there?

A. Check on the old man's wells, evaluate leases, so forth and so on.

Q. How long have you worked for W. R. Fairchild Construction?

A. Off and on all my life.

Q. What kind of business is it generally?

A. It started out as construction, construction business, pile driver is the main stay.

Q. But there's also an oil business attached to it?

A. Yes.

Q. You're involved in the oil business, I take it?

A. Yes, ma'am.

Q. Are you paid a salary for that?

A. Yes, ma'am.

Q. Directing your attention to the summer of 1980, where were you employed?

A. Bob Royals and myself had a company called F/R Corporation and --

Q. Who is Bob Royals?

A. He was a partner of mine, former business partner of mine.

Q. Mr. Fairchild, you're going to have to speak up a little bit because the jury is having trouble hearing you. Why don't you speak up --

THE COURT: The jury is having trouble. Position the microphone so you can speak into it.

BY MS. LITTLE:

Q. Why don't you lean forward a little bit? We were talking about the summer of 1980. Where were you working?

A. I was based in Hattiesburg, I was working at the airport, Hattiesburg Municipal Airport out of there.

Q. What did you do at the Hattiesburg airport?

A. We had F/R's offices out there.

Q. What is F/R?

A. It's a -- It's a corporation that dealt in buying and selling oil leases and minerals and royalties, primarily in the oil business.

Q. What does the F stand for?

A. Fairchild.

Q. What does the R stand for?

A. Royals.

Q. And again who was Bob Royals?

A. He was a partner of mine, 50/50.

Q. What kind of business was F&R Incorporated?

A. It was an oil corporation.

Q. Okay.

A. It's strictly oil.

Q. What sort of work did you do with that corporation?

A. Like I said, we bought and sold oil leases and different prospects.

Q. Were there other businesses at the airport going on at that time?

A. Well, just servicing airplanes and so forth and so on.

Q. And who was principally in charge of that aspect of the business?

A. Bob Royals.

Q. And who was principally in charge of F&R Incorporated?

A. I was.

Q. And this business was physically located at the Hattiesburg municipal airport?

A. Yes, ma'am.

Q. Okay. Did there come a time when you were involved in any illegal activities at the Hattiesburg airport?

A. Yes, ma'am.

Q. What kind of illegal activities?

A. We attempted to bring in a load of marijuana.

Q. You have to speak up?

A. We attempted to bring a load of marijuana into the airport.

Q. Who is we?

A. Me and Bob Royals, Robert Watkins, Charles Malone -- Duffy Nathan. We had a few others, I can't recall.

Q. We are having trouble with the microphone, you will have to speak slowly and speak up. Okay, let's go through the names again.

A. Robert Royals, Bob Watkins, Charles Malone, Duffy Nathan and a couple of others I don't recall now.

Q. Did you make any plans with this group of people?

A. Yes.

Q. Very, very briefly, what was your plan with respect to this illegal activity?

A. They were going to go to Columbia and pick up a load, a load of marijuana, and bring it back in. We were going to refuel the airplane and let it go again.

Q. Who was going to be making the trip down to Columbia?

A. Robert Watkins and Duffy Malone.

Q. Duffy Nathan?

A. Duffy Nathan, I'm sorry.

Q. And what was your job to be?

A. Just to set it up.

Q. To set what up?

A. Well, he came to me, since I had the airport, and wanted my permission to come in.

Q. Did you give them that permission?

A. Yes, I did.

Q. Now directing your attention to August 4, 1980, do you remember that day?

A. Oh, yeah.

Q. What happened that day?

A. The plane came in I think early that morning and was followed in by a chase plane.

Q. What plane are you talking about?

A. The plane of marijuana.

Q. Who was piloting the plane?

A. I was told that Robert Watkins was.

Q. Did you expect that that plane would be flying in?

A. Yes.

Q. Was this part of your plan to smuggle marijuana?

A. Yes.

Q. What happened after the plane came in?

A. I think Robert Watkins and -- He escaped, Duffy Nathan they caught him and another fellow by the name of Torres in the airplane.

Q. Were there police at the airport?

A. I suppose so, they arrested them. I wasn't out there.

Q. There was an arrest, there were arrests made, I take it, at the airport?

A. Yes, there was.

Q. Do you know who was arrested at that time?

A. Duffy Nathan and Torres, I think his name was, was arrested at that time.

Q. What about Mr. Malone that you mentioned?

A. I understand he was not at the airport but he was arrested later on that night.

Q. Did you go out to the airport?

A. No.

Q. Now were you arrested at that time?

A. No.

Q. To your knowledge were charges brought against the people who were arrested that you have just described?

A. Yes.

Q. Were those federal charges or state charges?

A. Federal charges.

Q. And did there come a time when you met with federal authorities to discuss your situation?

A. Yes.

Q. When was that?

A. Around November the same year, I think.

Q. November of 1980?

A. Yes, ma'am.

Q. And where did you -- Where was this meeting?

A. In Jackson, Mississippi.

Q. Who was present?

A. My attorney, Bill Porter, George Phillips.

Q. Who is George Phillips?

A. He's U. S. Attorney.

Q. Anyone else present?

A. I think a fellow by the name of Tucker was involved in it.

Q. Now what was the result of that meeting in Jackson?

A. I agreed to -- I agreed to cooperate with them.

Q. Cooperate with who?

A. The government for five years' probation and $15,000 fine.

Q. Okay. And is it fair to say that was an agreement that you made with the government?

A. They made the agreement, I just agreed to it.

Q. And again what was your obligation under the agreement and what was their obligation under the agreement?

A. I was to testify if need be against the parties involved in the bust.

Q. And what would you get in return?

A. Five years' probation and $15,000 fine.

Q. I want to show you what has been marked as Government's Exhibit 2 for identification and ask you to look at it.

(Delivers document to witness.)

Do you recognize that document?

A. Yes, ma'am.

Q. What is it?

A. It's a memorandum of understanding.

Q. What's the date on it?

A. I don't see a date.

Q. The top left-hand corner?

A. It's got a --

Q. Okay. You can take it out of that plastic wrapper there.

A. (Does so.)

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Q. Look at the second page. Do you see your signature on there?

A. I see it on the third page.

Q. Third?

A. Yes, ma'am.

Q. Is this your signature?

A. Yes, ma'am.

Q. Is this the agreement you previously described?

A. Yes, ma'am.

MS. LITTLE: We'd offer this into evidence.

MR. WEINGARTEN: No objections.

THE COURT: Let it be received.

(Exhibit No# 2 marked.)

BY MS. LITTLE:

Q. Mr. Fairchild, were federal charges brought against you at that time?

A. No, ma'am.

Q. What was the next thing that happened with your legal situation?

A. I don't quite understand the question.

Q. Well, in November of 1980 you had signed this plea agreement with the federal government?

A. Yes, ma'am.

Q. Were there interviews that followed that agreement?

A. Yes, ma'am.

Q. Who conducted the interviews?

A. Somebody with the Mississippi Bureau of Narcotics. I think his name is James Kelley. I don't know the people involved.

Q. These were interviews relating to narcotics?

A. Yes, ma'am.

Q. Now were any other charges ever brought against you?

A. No, ma'am.

Q. Directing your attention to the summer of 1981, did anything change in your legal situation?

A. Well, certainly they changed, but I don't remember the date of it.

Q. Subsequently were charges ever brought against you by the State of Mississippi?

A. Well, I was indicted by the state, yes, ma'am.

Q. Do you remember when that was?

A. No, ma'am.

Q. Okay. Let me show you what has been marked as Government's Exhibit 3 for identification and ask you to look at it.

(Delivers document to witness.)

Do you recognize that?

A. Yes, ma'am.

Q. What is it?

A. It's an indictment handed down by Forrest County.

Q. who is named as a defendant in that indictment?

A. Andrew Drew Fairchild and Robert L. Watkins.

Q. Is that you?

A. Fairchild is, yes, ma'am.

Q. Is this the indictment that was returned against you by the State of Mississippi?

A. Yes, ma'am.

Q. And flipping over and looking at the back, do you see a date on that?

A. It's got one on the front, July of 1981.

MS. LITTLE: Your Honor, we would offer this indictment as Government's Exhibit 3.

MR. FAWER: I'm sorry?

MS. LITTLE: I'm offering the indictment.

MR. WEINGARTEN: I beg your pardon. I have no objection, Your Honor.

THE COURT: It may be received.

(Exhibit No. 3 marked.)

BY MS. LITTLE:

Q. Mr. Fairchild, was this the first formal charge lodged against you?

A. Yes, ma'am.

Q. How did you plead to this charge?

A. Eventually I pled guilty to it.

Q. Do you remember when that was?

A. Not exactly, no, ma'am.

Q. Was it shortly after you were indicted, within a few months?

A. I would say within three or four months, something like that.

Q. January 1982, does that sound about right?

A. Yes, ma'am.

Q. You entered a plea of guilty at that time?

A. Yes, ma'am.

Q. Now what was the next event after you pled guilty, what was the next event to happen, going to be?

A. I think I got a delay in sentencing I was suffering with my back at that time.

Q. Well, before we get to the delay, what was the next planned event?

A. (No response.)

Q. You were to be sentenced, were you not?

A. Yes. Yes, the sentencing was delayed on account of my back at that time, yes.

Q. When was the sentencing originally scheduled for after you entered your plea of guilty in January of 1982, when were you scheduled to be sentenced?

A. The next term of court, probably in March. I don't remember the exact date.

Q. Now were you sentenced in March of 82?

A. No, ma'am.

Q. Why were you not sentenced in March of 1982?

A. I had a back operation.

Q. Do you remember when your back operation was?

A. Sometime around the first of March.

Q. Okay. Now once your back operation cleared up, were you sentenced then?

A. No, ma'am.

Q. What was the next thing in 1982 that happened to your case?

A. I think it was passed to the files. I'm not --

Q. What does that mean, passed to the files?

A. That it was put in limbo.

Q. Okay. I'm going to show you what has been marked as Government's Exhibit 4 for identification and ask you to look at it. You can take it out of there, if you want.

(Delivers document to witness.)

Do you recognize that?

A. Yes, ma'am, I think so.

Q. What is it?

A. It's an order passing my case to the files.

Q. What's the date on it?

A. 23 of December.

Q. What year?

A. 1982.

Q. Is that the order passing the case to the files that you have just described?

A. Yes, ma'am.

MS. LITTLE: We'd offer this order as Government's Exhibit 4.

MR. FAWER: No objection.

THE COURT: Let it be received.

(Exhibit No. 4 marked.)

BY MS. LITTLE:

Q. This passing of the case to the files, Mr. Fairchild, was that done at your request?

A. No, ma'am.

Q. Was it something that you expected?

A. No, ma'am.

Q. How did you learn about it?

A. My wife showed me a copy of it.

Q. When was that?

A. Sometime in January, I think.

Q. How did it come about that she showed you a copy of it?

A. I was working in the records in Simpson County and on my way back home that afternoon, I was riding with another fellow, as I passed by the office, I saw my car out at the Construction Company and when I got home, I was home about five or ten minutes, I don't know, my wife come in and she said what would you rather have more than anything else in the world? And I said, well, my health is what I'd really like to have. And sh said what else? And I said I can't think of anything. She said, well, what about this? And it was a copy of this order.

Q. Okay. Do you know where she had gotten it?

A. She had gotten it from my father.

Q. Now when the case was passed to the files, did that put the case to rest completely?

A. In my mind it did, yes.

Q. Did anything happen after that?

A. Yeah, the news media picked up on it shortly afterwards, around January sometime, first -- couple days after I got it, and made a big issue out of it.

Q. Did anything happen after that?

A. No.

Q. Did the case stay passed to the files or did something happen to it?

A. No, Judge McKenzie brought it back up, I think sometime around the 26th of January or something like that.

Q. That would be 1983?

A. Yes, ma'am.

Q. So the case had been passed to the files and then it was brought back to the active docket. Is that right?

A. Yes, ma'am.

Q. Now after it was brought back to the active docket, were you sentenced right away?

A. No, ma'am.

Q. Were you sentenced any time during the next year, 1983?

A. No, ma'am.

Q. Or in 1984, were you sentenced?

A. No, ma'am.

Q. What is the next thing that happened to your legal situation?

A. A, I don't know, so much has happened.

Q. Did anything happen to you in 1985?

A. Oh, yes, I was sentenced to --

Q. Before you were sentenced did anything happen in the fir part of 1985?

A. Other than the Grand Jury meeting coming out in the oper that's all I can think of.

Q. When the Grand Jury met here in March of 1985 did anythi happen that affected you?

A. A, well, I guess I wound up in the federal penitentiary that's what you're talking about.

Q. Were you indicted in March of 1985?

A. Yes, ma'am.

Q. And you were indicted by a federal Grand Jury sitting h in Hattiesburg?

A. Yes, ma'am.

Q. On what charges were you indicted?

A. Importing marijuana, conspiracy to import.

Q. Let me show you what has been marked as Government's

Exhibit Number 5 and ask you to look at it.

(Delivers document to witness.)

Do you recognize that?

A. Yes, ma'am.

Q. What is it?

A. It's an indictment handed down by the federal grand jury.

Q. Who is indicted?

A. Andrew Drew Fairchild.

Q. Is that the indictment that was returned against you?

A. Yes, ma'am.

MS. LITTLE: Move Government's Exhibit 5 into evidence.

MR. FAWER: No objection.

THE COURT: Let it be received.

(Exhibit No. 5 marked.)

BY MS. LITTLE:

Q. Mr. Fairchild, how did you plea to that indictment?

A. I pleaded guilty.

Q. Did you enter into any plea agreement with the federal court with respect to that indictment?

A. No, ma'am.

Q. Were any promises made to you with respect to that federal indictment?

A. No, ma'am.

Q. Were you sentenced both for that indictment and the state indictment?

A. Yes, ma'am, both of them.

Q. When was your sentencing?

A. It was in --

Q. You had two sentencings, didn't you?

A. One was on the eighth and one was three or four days later.

Q. One was in state court and one was in federal court?

A. Yes, ma'am. It must have been in August, I guess.

Q. What sentences did you receive?

A. From the state I received three years and $5,000 fine and the government, the federal gave me three years, six months suspended with two and a half years' probation.

Q. On the federal sentence it was three years in all but six months suspended. Is that right?

A. Yes, ma'am.

Q. Was there a prison term with the federal sentence?

A. Six months, yes, ma'am. And I did four and a half months of it.

Q. And your state sentence, did you have to serve any time in the state prison?

A. No, ma'am.

Q. Why is that?

A. Under my agreement with Judge Dickie McKenzie, any time that I spent in the federal correctional institution would satisfy all state time.

Q. That was an agreement you worked out with the state prosecutors?

A. Yes, ma'am.

Q. So under your federal sentence you were sentenced to prison, is that right?

A. Yes, ma'am.

Q. Did you go to prison?

A. Yes, ma'am.

Q. When were you released?

A. December 18th, 1985.

Q. Are you on probation now?

A. Yes, ma'am.

MR. FAWER: Before we break, Judge, may I just have a couple questions?

THE COURT: Go ahead.

MR. FAWER: I'm going to have, do you want -- I'm going to have a fairly lengthy interrogation.

THE COURT: How long?

MR. FAWER: I think about 45 minutes. I would like to ask a few questions before we break. Could I do that?

THE COURT: All right.

CROSS-EXAMINATION

BY MR. FAWER:

Q. Mr. Fairchild, I'm Mike Fawer. I represent Mr. Nixon. We've met on one occasion; in fact yesterday for a few minutes we saw each other?

A. Yes, sir.

Q. You testified about events that went from 1980 through today, correct?

A. Yes, sir.

Q. Is it fair to say that as far as you know, first, had you ever met Judge Nixon?

A. No, sir, I've never met Judge Nixon.

Q. As far as you know, did Judge Nixon have anything to do with any of the events you have described?

A. No, sir.

Q. Thank you. Now, let's pick up on just the last thing you talked about. Apparently in March of 1985 -- we'll come back to this later, but as I understand it, you had not, early March of 1985 there was no federal -- you had not been charged federally, correct?

A. That is correct.

Q. But you had been charged and had pled guilty back in state court, and you had pled, your sentence was pending since January 12 of 82, correct?

A. Yes, sir.

Q. As a practical matter, as far as you knew, the arrangements between your attorney and Bud Holmes was basically the same as your original understanding with the federal government, probation, no jail time, and pay a fine, right? That's what the original -- that's what you had agreed to in January of 82?

A. Probation and a fine, yes, sir.

Q. That's what I said. No jail, probation, fine, correct?

A. Right.

Q. Okay. But in March of 19 -- by the time we get to March of 85, this investigation is rumbling around, right? Major headlines, right?

A. Yes, sir.

Q. And in March of 85, Dickie McKenzie, whom you mentioned, who is the judge who would have sentenced you, correct?

A. Yes, sir.

Q. Tell the jury, he's making some noises like he's not going to go along with that plea agreement, right?

A. Yes, sir.

Q. So you had an attorney again, I think his name was Barry Hess, was that one of them?

A. One of them, yes, sir.

Q. Barry Hess was?

A. Karl Knepper.

Q. Karl Knepper. Somebody had the ingenious idea, let's go do what -- what we'll do is let's withdraw the plea in the state court, correct?

A. Yes, sir.

Q. Let's withdraw the guilty plea?

A. Yes, sir.

Q. Let's go to the feds and see if we can talk them into indicting us, and we'll plead and work out a deal where that takes care of the state charge, right?

A. When you say work a deal, who are you talking about working a deal with?

Q. The man over there?

A. No.

Q. Did Barry Hess and Knepper ask Reid Weingarten if he would indict you in the federal court so that you could enter a plea in the federal court to that case?

A. At that time Karl Knepper was not involved.

Q. Whoever it was. Hess?

A. Yes.

Q. And he went to Reid Weingarten and said look, what I would like to do is withdraw my state case, let him plead guilty, you indict him, we'll let him plead, then we'll agree whatever happens in federal court will take care of the state case, right?

A. Assume that's correct.

Q. Don't take my word for it. That's what, you were the defendant, it was, it was your neck on the line, right?

A. Right.

Q. Okay. So your attorneys go trotting, as far as you know, over to see federal prosecutor Weingarten, right? Correct?

A. Right, yes, sir.

Q. And lo and behold, on March 8th, you withdraw your plea in the state court, right?

A. You have those dates, I don't.

Q. Accept my dates. I can show you the record.

A. All right, sir.

Q. And on March 29th, you go in federal -- you're indicted by the federal government, Mr. Weingarten, correct?

A. Correct.

Q. Enter a plea the next day -- excuse me. Same day. Indictment and you immediately plead guilty, right?

A. That is correct.

Q. Okay. The understanding is, we'll get -- you're going to work it out, you're going to get around Dickie McKenzie sending you to jail, because the arrangement you work out, whatever the feds do, it will take care of the whole ball of wax, correct?

A. Well, something along those lines.

Q. You even, didn't you go into a chamber conference with Dickie McKenzie, work that out with him?

A. Yes, sir, we did.

Q. So the jury understands, you're hearing a lot of names. Dickie McKenzie is state judge right here in Hattiesburg?

A. That's true.

Q. I want the jury to understand, Judge Nixon has nothing to do with all of this that's going on, correct?

A. That is correct.

Q. He has no more to do with it than Judge Meredith does, correct?

A. That's true.

Q. Okay. The players in this piece are Dickie McKenzie and our man from Washington, right?

A. Right.

Q. You're using the federal government to avoid a state sentence, correct?

A. Correct.

Q. Okay. So what happens is Dickie agrees, excuse me, Judge McKenzie, whatever time you get with the federal government, whatever time you get in the federal service, federal prison, no matter what Dickie McKenzie gives you, hundred years, fifty years, three years, whatever you get there, that satisfies the state prison sentence, correct?

A. That's correct.

Q. Okay. Lo and behold you get a six month prison sentence in the federal court, right?

A. Correct.

Q. You serve four months of it? How long?

A. Four and a half.

Q. Go over to Tallahassee, serve four and a half months. The states sentences, McKenzie sentences you on the record to three years, right?

A. Correct.

Q. But you have the understanding that what Reid had worked out was going to take care of that sentence, right?

A. Mr. Weingarten didn't have anything to do with what I worked out with Judge McKenzie.

Q. I understand. Except that what the federal government sentences you to, that was going to control the amount of time you had to spend in jail?

A. That's true.

Q. Tell the jury one thing. The only thing, let me withdraw that. Doesn't sound to me, sir, you have not been in and out of the prison system?

A. That's true.

Q. But the name of the game is jail time, is that right?

A. That's true.

Q. I mean fines we don't worry about, probation we don't worry about; locked down we worry about, correct?

A. Correct.

Q. Okay. So the only thing we're concerned with is jail time and what you had worked out, when this was all done, is avoiding the worst of all, state jail time, by putting in your four and a half months in Tallahassee, right?

A. Right.

Q. You couldn't have worked that out had Reid Weingarten not been willing to file an indictment against you and everything flowed from there, right?

A. That's correct.

Q. Okay. As I understand it originally -- go back to the beginning, you ended up thinking that you were just going to have a walk, in effect, probationary sentence arising out of the drug bust; you ended up with the four and a half months, right?

A. That is correct.

MR. PAWER: Judge, could we hold the rest of it? I'd like to go back and ask some questions. I just wanted to tie that aspect of it down.

THE COURT: We'll recess until one-fifteen.

(Lunch recess.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 28, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 2

DAVID A. SCOTT
COURT REPORTER
Post Office Box 2202
Jackson, Mississippi 39225-2202

JANET CLEMENS
COURT REPORTER
Post Office Box 517
Oxford, Mississippi 38655

(Mr. Fawer continuing with cross-examination of Reddit Andrew Fairchild:)

MR. FAWER: May I proceed, Your Honor?

THE COURT: Yes.

MR. FAWER: Thank you.

BY MR. FAWER:

Q. Mr. Fairchild, if we might, could we go back, I'd like to go back to the earlier portion of the events. First of all, let me understand something. You're 50 years of age now?

A. 52.

Q. Excuse me, 52. And there was a period of, as I understand it, you're the son of Wiley Fairchild and in there came a point in time when you moved -- You did not grow up with him. Is that accurate?

A. No, sir, I didn't meet him until I was about 13 or 14 years old.

Q. And there came a point in time, though, when you went to work with Fairchild Construction Company. Is that right?

A. Yes, sir.

Q. And we call it Fairchild Construction but there is a part of that business that has nothing to do with construction, it has to do with the oil and gas business. Is that true?

A. That's right.

Q. Basically Wiley -- How do you refer to him?

A. The old man or Wiley.

Q. Okay. Mr. Wiley, though, has a, owns or has an interest in, acquires interest enlarge numbers of oil and gas leases. Is that right?

A. Yes, sir.

Q. And you were involved in the managing of that aspect of the business. Is that right?

A. Yes, sir.

Q. Okay. And for what period of time did you do that? When did you first go to work for the company? Approximately.

A. In the oil business or construction business?

Q. Either one.

A. I would say the first time about 1949, something.

Q. But when we bring our receives down to the period in the late 70's do I understand correctly that there came a point in time when you and Bob Royals had a business or were conducting it out of the offices at Fairchild Construction and you had a falling, falling out with your father. Right?

A. Yes, sir.

Q. That falling out took place sometime before mid 79?

A. Yeah, I think somewhere around February.

Q. Of 79?

A. Yes, sir.

Q. You move out. Let me just ask you something, do you move out or does he ask you to leave or is it just a parting of the way?

A. He sent me word he wanted me to leave, yes.

Q. He sent you word he wanted you to leave?

A. Yes.

Q. You move out and ultimately end up at the airport with the offices at the airport and that's when it leads to the events of 80 when the drug bust occurred?

A. That's true.

Q. Is it true to say in February of 1979 through 80 you and your father are not even on speaking terms. Is that right?

A. That's true.

Q. This went on beyond the drug bust at the Hattiesburg airport. Is that correct?

A. That's true.

Q. Now the drug bust received some publicity but your name was not mentioned in connection with it at the time of the raid itself?

A. That's true.

Q. Okay. You initially talked to the Mississippi bureau -- you were interviewed -- Let me withdraw that. There was no secret you and Bob Royals were involved in running the airport in terms of running the service end of the airport. Is that right?

A. That's true.

Q. So it's logical that the Mississippi Bureau of Narcotics would interview you about the whole thing?

A. True.

Q. And they did speak to you during late August 1980 and September of that year. Correct?

A. True.

Q. And you basically did not come clean with them. Is that right?

A. That's true.

Q. All right. At some point you had occasion to go, I guess it was in November, with you to accompany your attorney, Bill Porter, to Jackson to speak to the federal authorities. Right?

A. That's true.

Q. By that time, had, -- I think it was Nathan and Torres and Malone, the other people, and Hatfield, they had already been charged by the federal government, they're indicted?

A. That's true.

Q. And your position, at least you knew that your position was, you were in a precarious, in a risky position because you knew you were involved. Correct?

A. That's correct.

Q. But they hadn't yet indicted you. Right?

A. Right.

Q. Did you hire an attorney?

A. Not at that time, no.

Q. Okay. Tell me this: Bill Porter went with you to Jackson. Right?

A. That's true.

Q. Why don't you tell the jury how that came about? Bill Porter is an attorney. Right?

A. True.

Q. Had you known him before that?

A. Yeah, I've known Bill a pretty good while.

Q. Okay. Tell us how that came about.

A. A, well, when Bill really got involved in my case was, I had been to talk to Carroll Ingram one day, and after I left Carroll's office I dropped by Jimmy Fonz, it's a lounge, get a drink there.

Q. Stop a minute. Carroll Ingram, you went to see Carroll Ingram, he's an attorney in Hattiesburg?

A. Right.

Q. He's distantly related to your father?

A. Yes.

Q. And he's also the attorney for your father Wiley Fairchild?

A. At some time down the line he has been an attorney for him.

Q. But you chose to talk to him because you wanted some advice. Right?

A. Yes.

Q. Did you retain him?

A. No.

Q. You left there and you went to a place, Jimmy Fonz?

A. Jimmy Fonz.

Q. Many of the jurors are not from and familiar with Hattiesburg. It's a restaurant and lounge?

A. It's a bar, yes, sir.

Q. You went over there and what occurred?

A. I had a few drinks and Bill come in and he wanted to talk to me. And he wanted me to let him go talk to Bud Holmes for me and I told him, you know, I just want to get rid of it. And had some more drinks and later on he come over again and I told him no, that I if I wanted to talk to Bud, I'd go talk to him myself, I knew him. And, oh, I don't know what time it was, it was dark, I remember that. I was pretty well in my cups, and he come over to me again.

Q. I'm sorry. You sometimes have a habit of putting your face down and I don't know if the jury can hear what you're saying. It's important that they do.

A. All right, sir. He came to me again and I more or less wanted to get rid of it.

Q. Same day?

A. Yeah, same day.

Q.. Go ahead.

A. And he said, you know, let me go talk to Bud for you, you know. And we were standing, you know, back of Jimmy Fonz' restaurant and I said, well, what the hell, go ahead, you know. I just wanted to get rid of it. And he left a running and came back, oh, I guess 30 or 40 minutes later, and he says, he said guess we'll see Bud in the morning. And the next morning we went and talked to Bud.

Q. Okay. Now this is sometime, I guess, in the fall of 1980. Correct?

A. A --

Q. It's before you go to Jackson in November?

A. Yeah, but I don't know exactly.

Q. Did you and Bill Porter go to see Bud Holmes?

A. Yes, we did.

Q. Okay. And did you discuss the case the case, or did you discuss your problem with him?

A. Yeah.

Q. Did you admit to Bud Holmes your involvement at that time?

A. A, I think I did. It's been so long ago.

Q. Okay. So the jury understand, Bud Holmes at that point is not a federal prosecutor, he's a state prosecutor. Right?

A. That's true.

Q. Why were you going to Bud Holmes?

A. I supposed he would be the man to see in town.

Q. Porter a friend of of his as far as you knew?

A. Yeah, it's a well-known fact that Porter and Bud are Bud are good friends.

Q. I take it Bud was not only district attorney he was a well-known lawyer in the community. Right?

A. Sure.

Q. When you -- By the way is this at the DA's office?

A. Yes, sir.

Q. I mean you didn't go in there at night, you and Bill Porter walked in, asked to see Bud Holmes and sat down with him in his office. Right?

A. That's true.

Q. And some discussion of the problem of the position you were in. Correct?

A. Right.

Q. Did he recommend you go talk to George Phillips?

A. Yes, he did.

Q. What did he say?

A. He said what you need to do is go see George and make you a deal with him.

Q. Now so the jury understand, George Phillips was not a state prosecutor, he was the United States Attorney for the southern district of Mississippi. Right?

A. That's true.

Q. Now was George from the Hattiesburg area, though?

A. I think he is. I don't know George that well.

Q. Do you know whether George and Bud Holmes had been contemporaries and that they were friends as well?

A. I didn't know it for a fact and I still don't.

Q. Okay. In any event, did Bud Holmes suggest that the best thing for you to do, as a piece of advice he was giving you was try to go and make some deal?

A. Yes.

Q. Some arrangement with the federal authorities. Right?

A. That's right.

Q. Did he offer to make a call to Mr. Phillips to set up an appointment?

A. Yes, he did.

Q. Were you present when any such call was made?

A. No, sir, I was not.

Q. Okay. I take it he was -- when you -- is that about it at that point?

A. That's about it.

Q. And Bill Porter was present?

A. Yes, sir.

Q. As far as you were concerned, what were you expecting Bud to do aside from just making an appointment for you to go see George Phillips?

A. I thought that would be about it.

Q. Okay. And as far as you could see, was he giving you, I mean was he doing what he, seemed to be giving you some reasonable advice?

A. I thought so at the time, yes.

Q. Would it be fair to say you looked upon yourself as potentially being indicted in the federal court. Right?

A. Yes.

Q. And so you were concerned about what was going to happen to you at that point in time?

A. That's true.

Q. Okay. Did you and Mr. Porter then go to Jackson?

A. Yes, sir.

Q. And about how long after the conversation with Bud Holmes?

A. I don't know exactly. It's -- It was very short, it was a short period of time.

Q. Tell us what happens when you go to Jackson.

A. Bill went in and talked to, I assume he talked to George and a fellow by the name of Tucker.

Q. James Tucker?

A. James Tucker.

Q. Another assistant U. S. Attorney?

A. Yeah. I didn't talk to him at that time. But he come back out and said I can make this deal for you, five years, $15,000 and he said, you better take it.

Q. Just so the jury understand, when you say five years, you mean five years of what?

A. Probation.

Q. No jail term?

A. No jail term.

Q. Would you have to plea to a felony conviction?

A. Yes.

Q. So you would would have to plea to a felony, five years, no jail sentence?

A. Five years' probation and $15,000 fine.

Q. What would you have to do?

A. It was my understanding that I would have to testify against the people involved in this marijuana bust.

Q. As a practical matter at that point in time, wasn't the trial of the other four who had been indicted already scheduled before Judge Cox? Do you recall that?

A. I don't know whether it was scheduled or not, but I knew what was going on.

Q. When you say you knew what was going oh, what was your understanding as to what those other four were going to do?

A. Yes, I knew what they were going to do.

Q. What was that?

A. They were going to plead guilty.

Q. So if the other four were going to plead guilty, I take it then you wouldn't have any, there would be nothing for you to do in terms of testifying at that trial?

A. That's true.

Q. That would in effect end that requirement. Right?

A. Right.

Q. But there was another person involved at least who wasn't around who hasn't been indicted, namely Bob Watkins?

A. Right.

Q. Possibility if they ever indicted him, you would be called upon to testify?

A. True.

Q. By the way, had you implicated Bob Royals up to that point in time?

A. No, I had not.

Q. As far as you knew, though, he was as involved as you were?

A. Yes.

Q. And you and he were to split whatever money you made on the smuggling operation?

A. Yes.

Q. In any event that's your state of mind when Porter tells you what kind of deal he can cut and I'm using the word cut?

A. Yeah.

Q. There was nothing wrong with that, it was a plea bargain?

A. Right.

Q. When he tells you that do you immediately tell him yes, do you go and think about it? What do you do?

A. The best I recall, we beated around the bush a little bit and then I agreed to it.

Q. Okay. Talk to anybody else or just basically think it through, talk to your wife a bit?

A. No, no. No, my wife didn't know anything about it. The first thing -- Well, she didn't know anything about it.

Q. Your wife didn't even know of your involvement at that point in time?

A. No.

Q. Up until this point there's no publicity whatsoever?

A. None.

Q. As far as you know, the public doesn't associate Drew Fairchild with the bust at the Hattiesburg airport. Right?

A. No.

Q. You do execute the memorandum of understanding. Is that right?

A. That's correct.

Q. And it spells out in terms just what you have told us. Correct?

A. Yes.

Q. From your perspective, I take it it is a, you're satisfied, you have cut yourself a very nice deal? If the thing is going to go away on that basis, you're in good shape?

A. It was the best I could do at the time.

Q. You knew if you went to trial, you could face upward of five years in prison. Is that right?

A. That's true.

MR. FAWER: Your Honor, may I ask or may I be permitted to read the memorandum of understanding to the jury at this time?

MR. DUNHAM: No objection.

THE COURT: You may read it.

MR. FAWER: Thank you.

Ladies and gentlemen, Government's Exhibit 2, it stays United States Government Memorandum, it's dated November 19, 1980, it has affixed to it the card of William Porter with some telephone numbers on the back side and it says, to the Honorable William F. Porter, Attorney at Law, -- Excuse me. It says the subject is Reddit Andrew Fairchild.

BY MR. FAWER:

Q. That's you, Drew, correct?

A. Yes, sir.

Q. It's also the attention of James Tucker, Chief of the Criminal Division of the United States Attorney's office. It's headed Memorandum of Understanding and it says as follows.

(Memorandum of Understanding read.)

Dated 19th of November, 1980. Signed by James Tucker, chief of the criminal division, U. S. Attorney's Office, agreed to, signature of Drew, Redditt Fairchild, your signature, is that correct?

A. Yes, sir.

Q. And William Porter, his attorney. Now, just so the jury understands, Judge Nixon had nothing to do with any of the events that have taken place so far, correct?

A. No, sir, he did not.

Q. So far as you know, he like everybody else was totally unaware of your involvement, correct?

A. That is correct.

Q. Okay. Now, did you thereafter cooperate with the FBI? Were you debriefed about what you knew about the case?

A. Yes, sir.

Q. You recall that happening I think it was in March of 1981 they called upon you to talk to them and you did, at some length, correct?

A. Yes, sir.

Q. Was there at any time any dissatisfaction voiced by the FBI in 1981 or by Phillips, Tucker, anyone representing the federal government? Was anyone dissatisfied with your cooperation?

A. I forget the FBI agents that was in charge here at the time, but while I was talking to him, he seemed to be a little upset that I wouldn't admit to having seen that airplane.

Q. Okay. So there was some feeling by him, at least on his part, that you were not being totally cooperative?

A. That's true.

Q. Did Mr. Phillips ever indicate that he believed the same?

A. I never spoke to George except one time after that, and he got hot and slammed the door in my face.

Q. Just so the jury understands, you were up in Jackson, the first time you saw George was when the Memorandum of Understanding was put together, is that right?

A. That's true.

Q. Then sometime down the road in 1981, you were in Jackson, and you had occasion to see George in the federal building,

George being George Phillips?

A. Yes, sir.

Q. He apparently got hot and slammed the door, what was that about?

A. He didn't think I was being truthful about not seeing that airplane, not knowing it was stolen, something like that.

Q. You got the message that he didn't exactly believe what you were saying?

A. Yes, sir.

Q. Okay. Nothing, as I understand it -- nothing however occurred on the federal -- federal government didn't come along and said we're going to prosecute you, the deal is off or anything of that sort?

A. No, that same day some narcotics agents said to me that if I didn't set them up something to bust, make an arrest on, by the next term of court or something, they was going to have me indicted.

Q. So that's, you had not been indicted, of course, by any authorities up to that point in time?

A. No, sir.

Q. This is the Mississippi Bureau of Narcotics?

A. Yes.

Q. MBN?

A. I assume that's who it was.

Q. Okay. You've heard of the Mississippi Bureau of Narcotics?

A. Oh, yes.

Q. They are the state people who investigate drugs, correct?

A. Yes, sir.

Q. And that same day that you recall this incident with George, the MBN people were saying if you didn't help them make another case --

A. Right.

Q. That by the next term of court you're going to end up being indicted?

A. Yes.

Q. In the spring, I take it we're now sometime in the spring of 1981, correct?

A. Yes.

Q. Had you, let's come back. You had never paid George -- excuse me. Bill Porter for representing you on that federal level, is that right?

A. That's true.

Q. And it's fair to say he had sent you a bill, he was asking you for payment for his legal services, whatever they may have been?

A. Yes.

Q. And what was the figure he was asking for?

A. He was asking ten thousand dollars.

Q. Okay. Did you have ten thousand dollars to pay him?

A. Not in cash, no.

Q. Okay. Did he, was there on one occasion he asked you for it or a number of occasions?

A. He asked me for it on a number of occasions.

Q. The bottom line is you didn't pay him anything at that point in time, right?

A. That's true.

Q. He sued you?

A. That's true.

Q. Okay. Let me show you a document, just so we have it, marked it Defendant's Exhibit 1. Let me show you Defendant's Exhibit 1, the first page of the summons and the second, third and fourth pages are the suit, are they not, that he filed in court for the ten thousand dollars fee, correct?

A. Yes.

Q. Okay. Now, during this period of time, are you, you're still for all practical purposes not on speaking terms with your father, right?

A. That's true.

Q. All right. You are still friendly of course with Bob Royals?

A. Yes.

Q. Was Royals a friend of Bill Porter's?

A. Very close friend.

Q. Okay. And were there some discussions between you and Royals about your paying Porter?

A. Yes.

Q. Okay. And to your knowledge was Royals, did Royals know your father?

A. Yes, knew him very well.

Q. Okay. First, did Royals come to you and ask you to make efforts to pay Porter?

A. Well, he didn't, I don't know what you mean by effort, but he mentioned it to me, yes.

Q. You tell me. I thought, what I'm asking you, did he suggest to you that you're to figure out some way to be able to pay Bill Porter?

A. No, not really.

Q. What did he say?

A. He just said he and Bill had, he and Bill had went to Montgomery to visit a friend of theirs by the name of Joe Crone.

Q. Joe Crone was in prison at Maxwell?

A. Maxwell Air Force Base. On the way back, Bill mentioned the ten thousand dollars, and Bob says Drew don't have it.

Q. You have to keep your voice up. Can you hear him? Whenever you can't hear, raise your hand, we can make sure it's louder.

A. He said well, Drew don't have ten thousand dollars right now. And Bill said well, the old man's got it. And Bob says he told him, hell, him and his old man don't even talk to one another. Says that won't do Drew no good.

Q. That what?

A. He said it won't do Drew no good.

Q. This is a conversation that Royals was reporting to you he had with Bill Porter, correct?

A. That's true.

Q. Based on that, are you aware of Royals, at that time, then going and talking to Wiley Fairchild about that legal fee?

A. I heard about it sometimes later, yes.

Q. Okay. Royals was in business with you, but Wiley was willing to talk to him, even if he wasn't willing to talk to you, correct?

A. That's true.

Q. You said you heard about the Royals visit a little bit later?

MS. LITTLE: Objection, he's getting into some hearsay.

MR. FAWER: I didn't bring out any hearsay.

MS. LITTLE: I anticipate he's going to.

MR. FAWER: As soon as I do, I think the objection will be well founded.

BY MR. FAWER:

Q. In any event, at that time do you recall having a conversation with your father shortly thereafter in which he asked you how many hours do you believe Bill Porter had put in on your case?

A. Yes.

Q. Okay. And did you and he discuss the matter?

A. Yes, we did.

Q. Where did it take place?

A. In his office.

Q. Okay. And was it agreed, or did you say you thought it was somewhere in the neighborhood of 25 hours?

A. I don't remember exact hours. It could have been something like that, yes, sir.

Q. And did Mr. Fairchild, Wiley Fairchild, then send or deliver to Bill Porter or give to Bill Porter a check in that approximate amount? I say that approximate amount, in the amount reflecting a payment equivalent to 25 hours of work?

A. He subsequently sent him a check. I always thought it was for twenty-five hundred dollars, turned out to be 26, something like that. But I didn't know about that check until I was forced to sell a bunch of leases in royalty I had to my daddy.

Q. I want to come to that. That comes a little later in the story, right?

A. Right.

Q. Let me show you at this time -- bear with me one moment, Your Honor. I'm sorry. Let me show you what's been marked as Defendant's Exhibit 2 and see if you can identify that document?

A. Yes, it's a check to William F. Porter from Wiley Fairchild in the amount of 2,669.19.

Q. And the date of it is July 3, 1981, correct?

A. That is correct.

Q. Okay. And at that time you didn't know about it, is that right?

A. That is correct.

Q. And you were having no communications as such, at least you had very little communication with your father?

A. That is true.

Q. There came a time then, the next thing that occurs from what I understand, from what you've testified this morning, is the next event is you, out of the blue, end up being indicted by the state, correct?

A. That is correct.

Q. That occurs on August 29, excuse me, August 26, the indictment that you identified earlier today?

A. That is correct, true.

Q. Okay. And did you expect to be indicted by the state?

A. No, it come as a shock to me.

Q. There was no forewarning as far as you know?

A. No.

Q. Had you discussed the matter with Bud Holmes or anybody called you in and talked to you about it before you were indicted?

A. No.

Q. Okay. Did you have any discussions -- when is the first time you spoke to Bud Holmes? He was district attorney whose office indicted you, correct?

A. That's correct.

Q. Did you see Bud Holmes the day after you were indicted?

A. Yes, I did.

Q. Tell the jury about it.

A. I went up to see him about the middle of the day I guess, might have been eleven o'clock, something like that. And I asked him, I said Bud, what in the hell is going on? He said well, they brought this stuff to me, I presented it to the grand jury. I said well, I said what about my deal with George Phillips, he said well, he said I called George, George said you didn't have a deal with him. I called Porter, Porter said you didn't have a deal with him. I said well, okay.

Q. Well, Bud said he had spoken to Porter, Porter said you had no deal with the federal government?

A. Yes, sir.

Q. Did you, did you bring -- you had seen this Memorandum of Understanding, hadn't you?

A. Yes, I signed it.

Q. So did Bill Porter?

A. Yeah.

Q. Did you say to Bud anything about, well, Bill Porter signed the agreement?

A. I just brought it back up. I said look, we had this agreement; he said you didn't have one.

Q. Was there any discussion, do you recall Bud mentioning to you that the reason Phillips had said, George Phillips had said there was no agreement is because they viewed you as having broken the agreement by not cooperating?

A. No.

Q. Was anything else said at that time?

A. No.

Q. Was there any discussion about you getting an attorney?

A. No.

Q. Okay. Did you have an attorney at that point for the state case?

A. No.

Q. Did you hire Bill Porter?

A. Yes, I did.

Q. Did you have any discussions with Bill about payment to him for now representing you on the state charge?

A. Yeah. He just said he had to have his money up front.

Q. Okay. Did you know -- when did you learn that he had already gotten -- let me withdraw that. Up until then, as I understand it, you knew that he was claiming you owed him ten thousand dollars from the first case, right, the federal case?

A. Uh-huh (yes).

Q. You didn't know about the payment from Wiley to them?

A. No, I did not.

Q. Did he tell you that at that time?

A. No.

Q. Did you speak to Wiley? Let me withdraw that. Was there a figure caused between Porter and you about representing you now in the state charge?

A. I'm not going to say there was, not going to say there wasn't. I just don't remember.

Q. Okay. Was there any, let me go -- see if this refreshes your recollection. When you were arraigned on the state charge, brought into court to plead guilty -- not plead guilty, you did plead not guilty, on September 3, 1981, Porter was your attorney, correct?

A. Correct.

Q. Okay. By that time had you worked out the financial arrangements with him?

A. Yes.

Q. Tell the jury how that happened?

A. I think Bill wanted the ten thousand dollars. What I had to do was sell some oil interests I had at a good price to my dad to raise that money real quick.

Q. How did you do that?

A. I just assigned that stuff to him, he quoted the price, I agreed to it.

Q. Let me see if I understand. You had some oil and gas interests, right?

A. Right.

Q. Alone or with somebody else?

A. With Bob Royals.

Q. The two of you owned these royalty interests?

A. Yes, sir.

Q. And you viewed them --

A. Royalty leases.

Q. You viewed them as having some value, right?

A. Sure.

Q. And you wanted to get some money for them?

A. Right.

Q. So did you approach someone about this or did someone suggest that you assign them to him?

A. I don't know how it come up, but my dad knew I had them for sale, and I wound up assigning them to him. I don't know just how it come up, don't remember.

Q. To cut through it, you spoke to your father about this, right?

A. Right.

Q. Did you call him, go to see him? where did it take place?

A. I talked to him on the telephone.

Q. And you told him you needed ten thousand, right?

A. Right.

Q. You told him what it was for?

A. Right.

Q. By the way, between August 26th when you got indicted and September 3rd, publicity hits, right?

A. Right.

Q. For the first time the Fairchild name is being spread over the paper in connection with the drug bust, right?

A. That's true.

Q. Did you get some feeling from him he was angry about that? Did he talk to you about it, Wiley I'm talking about?

A. Yes, he talked to me about it.

Q. Was he upset about it?

A. Very upset.

Q. Okay. Did you in those conversations or that conversation talk to him about the money you needed?

A. It was, well, I won't say how it come up, but yes, we talked about it.

Q. Did he tell you at that time that he had already paid Porter twenty-five hundred some odd or 2600 dollars?

A. No.

Q. When did he tell you that?

A. The day I was arraigned, I was walking out the building, Bill Porter and I were walking out the back of the courthouse. I asked him did he get his check, he said yeah.

Q. How much was the check for?

A. 7,500.

Q. He thought -- you thought he was going to get ten thousand?

A. Right.

Q. Did you ask him about it?

A. No.

Q. How did you find out he had already gotten the other twenty-five hundred?

A. I asked my dad about it.

Q. Okay. Was it at that point in time that your father, that Wiley insisted if he was going to pay the ten thousand dollars, the total of ten, you were going to assign all these wells over to him?

A. That was agreed in advance, yes.

Q. Okay. It wasn't enough though you had to agree to it, someone else had to agree to it?

A. That's true.

Q. Who was it?

A. Bob Royals.

Q. Did you talk to Bob about it?

A. Oh, yes.

Q. He wasn't going -- he wasn't indicted then, right?

A. No, he wasn't.

Q. He was your friend and business partner, right?

A. Right.

Q. He agreed to turn over his interest together with yours?

A. Right.

Q. To your father?

A. Right.

Q. That's what your father insisted upon so you could come up with the money?

A. Right.

Q. Am I correct?

A. That's correct.

Q. Okay. Did you view your wells as worth more than ten thousand dollars?

A. To clarify the situation, I think I got 25 thousand dollars for the package, but I viewed them as having more worth than that.

Q. When you say you got 25 thousand, in addition to this ten he paid Porter, you got 15 from him and in some other connection?

A. It was 25 total. Ten plus 15.

Q. That's my point. Ten went to Porter, the balance went to you?

A. Me and Bob, yes.

Q. You and Bob split it?

A. Right.

Q. Okay. Let me show you what's been marked, what I'm marking as Defendant's Exhibits 3 and 4.

THE MARSHAL: She is having a problem hearing, Your

Honor.

THE COURT: Mr. Fairchild, when you resume talking, get up a little closer to that mike.

THE WITNESS: Yes, sir.

BY MR. FAWER:

Q. Let me shoe you what's been marked Exhibits 3 and 4. Number 3 is the 7,500 check, am I correct?

A. That's correct.

Q. And that's dated September 3rd, the same day you were arraigned and pled not guilty with Bill Porter at your side?

A. That's true.

Q. I now want to show you Defendant's Exhibit No. 4, which is -- I'm sorry, Your Honor. Is it all right to approach the witness and show --

THE COURT: It's all right except you are cutting off his conversation with the jury.

MR. FAWER: I beg your pardon. Is it all right this way.

THE COURT: Turn around the other way.

MR. FAWER: Okay.

BY MR. FAWER:

Q. No. 4 is assignment of oil gas and mineral leases?

A. Yes, sir.

Q. Is that correct?

A. That's correct.

Q. Dated September 4, the day after the arraignment, signed by yourself and Mr. Royals?

A. Correct.

Q. Then these were recorded by your father in the county records?

A. That's correct.

Q. As I found, you turned over interests in some, over thirty wells, correct?

A. No, thirty lease interests. They wasn't all in wells, no.

Q. When you say not all in wells, what else was there?

A. You talking about like each one of them was under a well. They wasn't under no well.

Q. There was interest in land that could be developed in --

A. Prospects.

Q. Prospects, mineral rights, is that correct?

A. Fine.

Q. But the thirty different units, is that right?

A. Thirty different prospects, yes.

Q. Fine. And that's No. 4. Okay, so we're in early September of 1981 at that point, right?

A. Yes, sir.

Q. You have enough money, I mean basically right -- excuse me. Porter has said, he in effect has received the ten thousand, and that's going to take you through this case, that's what he's taking, that's going to pay for your representation in the state case, right?

A. Right.

Q. You don't have any problem any longer as I understand it with his legal fees?

A. No.

Q. Okay.

Q. Is it fair to say you then as -- Watkins was not around at that time, was he?

A. I don't think so.

Q. He was a fugitive. Right?

A. Right.

Q. Your trial was set for earlier the following year, January 1982. Correct?

A. Correct.

Q. Shortly before that trial, though, Watkins was arrested or found in Texas. Am I right?

A. That's correct.

Q. And Porter and Bud Holmes make a deal about your entering a plea in the state case. Right?

A. Right.

Q. Tell us what you know about that.

A. It's very simple. Bud come to me and he says, we'll either make a deal with you or we'll make one with Watkins, one or the other.

Q. One of you is going to go down and the other is going to testify. Right?

A. Right.

Q. And if you want it, it's yours?

A. Right.

Q. Did you take it?

A. Yes.

Q. What was the deal?

A. Testify against Watkins, get five years' probation and $5,000 fine.

Q. Okay. Basically, it's the same deal that you had made in the federal court. Right?

A. Yes.

Q. In fact, you saved $10,000?

A. Right.

Q. Here it's only five, before it was going to be 15,000?

A. Right.

Q. So you're agreeing to take a plea in state court instead of the federal court, same probationary period, a little less in terms of the fine. Right?

A. Right.

Q. I take it that's because the fine provision in the state court is less than the federal?

A. That's true.

Q. The maximum fine is only 5,000, conspiracy?

A. That's true.

Q. You agree to this and Porter agrees to it. Right?

A. Right.

Q. You enter a plea on January 12, 1982. Correct?

A. Correct.

Q. By the way, is it fair to say that this deal, this plea agreement, is simply a hand shake between in effect Porter, you and Bud Holmes, it's not written down as this one was, as the Government's Exhibit 2 was?

A. Not to my knowledge it wasn't.

Q. Am I accurate that it's basically --

A. Very accurate.

Q. -- as far as I understand that's the way it's done in Mississippi in state court?

A. I don't understand that, but that's the way it was done in my case.

Q. It didn't trouble you to do it that way?

A. No.

Q. Okay. At that point your sentencing, I think, was set for March as the next date on which you would be sentenced before you were actually sentenced?

A. Next term of court, yes.

Q. Is it fair to say your sentencing was a formality and you were not going to jail or anything, you were just going to be put on probation?

A. True.

Q. You had a back operation I think in between?

A. I think it's in between.

Q. Over at Oschner in New Orleans?

A. Oschner Clinic.

Q. Oschner Clinic. Did you know that they wanted you or would want to have your testimony, did you understand they would want your testimony before this sentence was imposed?

A. No, I don't think it was even brought up.

Q. Initially, it wasn't?

A. No.

Q. But there was a series of continuances then for that reason. Am I correct?

A. I knew of, after my operation, of one continuance. I knew about it.

Q. When you say you knew of it, you mean you actually saw the document?

A. No. No, Bill called me.

Q. Bill Porter?

A. Right. The rest of those, I have no knowledge of.

Q. You do know that there were continuances?

A. Yes, I do know that.

MR. FAWER: Bear with me just one moment. Your Honor, may I have a moment, please?

BY MR. FAWER:

Q. Let me show you what I'm marking as Defendant's Exhibit Number 5, these come, all of them come from the state court file in your case. All right?

A. Okay.

Q. Let me show you so we don't waste time. They are a series of continuances, the first one dated March 19, 1983, right after you were sentenced, right after your back operation is the first continuance. Okay?

A. Okay.

Q. It's based on the fact you're still basically recuperating?

A. Okay.

Q. There's another motion by Bill Porter in June of 82, in which the indication is you have had surgery and you still haven't recovered. Correct?

A. Correct.

Q. Okay. And another one in August, I believe, excuse me, the order followed in June, another one in, an order delaying it because of the surgery and other health related reasons. Correct?

A. Correct.

Q. And it goes on from July into November, in which time there's another request for a continuance. Right?

A. (Nods yes.)

Q. Okay. Now I take it Bill Porter as your attorney was authorized to ask for these continuances based upon your ill health, the operation, et cetera. Is that right?

A. It's like I said, Mr. Pawer, I knew, I think, of the first one when he called me. The rest of the continuances, I knew nothing about.

Q. Okay. But is it fair to say you were not upset about the fact that you were not being asked, the fact that you had not been sentenced did not disturb you?

A. Not a bit in the world.

Q. 1982 was going along that way, for the best part you were recovering from your back surgery?

A. Yes.

Q. And that moves us down into the latter part of that year into November and by the way is it fair to say that throughout that year Watkins has been a fugitive because he has escaped or has disappeared when they had him in Texas. Correct?

A. Yes, sir.

Q. Okay.

A. That's true.

Q. You in fact had signed an affidavit of identification to help bring him back from Texas but apparently by the time they actually sought to extradite him, he was gone?

A. That's true.

Q. By late 1982, he had been apprehended in Florida in October of 1982. Do you recall that?

A. Yes, sir.

Q. And, in fact, in November of 1982, one of the reasons for the continuance or the reason for the continuance is that the company defendant has been apprehended in Florida and that the Mississippi authorities are moving to extradite him. Okay?

A. Hm-hm.

Q. Okay. We come then to a point in time -- And all through this point in time you are not talking to your father. Is that true?

A. That's true.

Q. Except for that initial wave of publicity when you were first indicted and then plead guilty, we don't have a constant flow of it because you have the continuances and, like you say, you didn't even know about the continuances?

A. That's true.

Q. Obviously there had been no publicity or you would have read about it or heard about it. Correct?

A. Correct.

Q. So basically you have a silence or a period of no publicity throughout 1982. Is that correct?

A. Right.

Q. You said you had the back surgery at Oschner in March 1982?

A. Yes.

Q. How long were you recuperating?

A. It, it took about four or five months, I guess.

Q. As a practical matter during that entire period of time, you're out of touch with your father. Correct?

A. Correct.

Q. And nothing's going on with the case, I mean it's silent, there's nothing, you have already plead guilty, it's a dead issue. Correct?

A. Correct.

Q. No one has done anything about the sentencing during that period of March through the summer of 1982. Right?

A. Right.

Q. Nothing going on, no calls from Wiley, nobody's upset. Correct?

A. Correct.

Q. In December of 1932, right around Christmas, you described the visit where you were coming back from, you were checking out some oil leases in Simpson County?

A. Yes.

Q. You had been checking title. Right?

A. Running title.

Q. Running title. You drove back on 49 past the Fairchild Construction Company?

A. Yes.

Q. You noticed what?

A. My automobile over there.

Q. And the significance of that meant that who was over there?

A. Right.

Q. Who?

A. My wife.

Q. You hadn't been over there?

A. No.

Q. So it would be your wife?

A. Right.

Q. You go on home and she arrives shortly after that?

A. Yes.

Q. And she gives you something?

A. Right.

Q. What is it?

A. It's an order passing my case to the file.

Q. Okay. Did you read it?

A. Yes, sir.

Q. Okay. And basically it did in effect, for certain reasons, pass the case to the file?

A. That's true.

Q. Look like good news to you?

A. Real good news.

MR. FAWER: Your Honor, may I read that order to the jury at this point?

MR. DUNHAM: No objection.

MR. FAWER: Thank you.

Ladies and gentlemen, this is an order, Circuit Court of Forrest County, State of Mississippi versus Drew Fairchild, the cause number, and it says "Order." (Mr. Fawer reads the order to the jury.)

BY MR. FAWER:

Q. That's what she read to you?

A. Right.

Q. You had never been involved in the state court of Mississippi before, so you never really had any significance of what passing to the files meant did you?

A. Just from what I read in the newspaper from time to time.

Q. You mean prior to?

A. Yeah, prior to.

Q. Okay. And I take it your wife did indicate that she had gotten this document or a copy of it from Wiley?

A. Right.

Q. Did Wiley call her and ask her to come over and pick it up or how did that come about?

A. Yes, he called her and asked her to come by and pick it up.

Q. Did you call her?

A. Not then --

Q. I only want to know if you learned it later on. I'll come to that. I just want to know did you ask your wife or have a discussion with her at that point about what she understood the way that Wiley got it?

A. No.

Q. We'll come to that. I just want to take it in sequence. You look at it, and it's not a bad Christmas present?

A. No, not bad.

Q. From your point of view?

A. Right.

Q. As a practical matter the only thing that hasn't happened is to be told that you're not -- excuse me, been told that you're on probation and pay 5,000. Right?

A. Right.

Q. You're already a convicted felon at that point? You entered your plea?

A. Correct.

Q. Passing it to the files doesn't change that one bit. Is that right?

A. I'm not a lawyer, Mr. Pawer.

Q. As far as you understood?

A. As far as I, at that point it was passed to the files I thought that was the end of it.

Q. Okay.

A. Whether or not I had pled or what.

Q. But what happens, as I understand it, immediately after that or right after the first of the year, the newspaper pick up that it was passed to the files. Right?

A. That's true.

Q. It didn't pick it up on the 26th or the 27th, for some reason when it was filed on the 23rd, when it occurred, a week or so went by, bam, there's that publicity again. Right?

A. Right.

Q. There's the name Fairchild in the press. Right?

A. Right.

Q. Okay. Let me show you -- let me show you -- You remember reading about the article in the paper?

A. I read so many of them.

Q. The the publicity mentioning that the case had been put to the inactive file?

A. Yes, sir.

Q. Okay.

MS. LITTLE: May we approach the bench, Your Honor?

THE COURT: Yes.

(SIDE BAR:)

MS. LITTLE: Your Honor, I just want to raise the fact that so far every one of the defendant's exhibits were not turned over to us on discovery. I realize this is cross-examination but I expect Mr. Fawer anticipated he would be using some of these exhibits.

MR. FAWER: I absolutely did. But I have an obligation under Rule 16 to give you what I introduce in my case, not on cross. I would also suggest you have every single thing, or if you don't I don't understand your preparation but, surely, since you attached these documents to your own pleadings I'm sure you read them.

MS. LITTLE: This particular document I haven't. I simply ask if Mr. Fawer has many, many more documents --

THE COURT: If you do have, give them to her.

MR. FAWER: I have ab obligation under Rule 16 to give them to her.

THE COURT: Give them to her. It will speed things up.

MR. FAWER: Yes, I will.

(IN OPEN COURT:)

MR. FAWER: Judge, I don't recall, did I actually moved the admission of Defendant's Exhibit 1 through 5?

THE COURT: Let them be received.

(Defendant's Exhibit Nos. 1 through 5.)

MR. FAWER: Fine.

MS. LITTLE: Your Honor, with respect to the continuances we would ask under Rule 106 the entire file be admitted.

MR. FAWER: That's fine, I have no problem with that. Why don't you make the file, state file an exhibit or Government's Exhibit? I want to isolate out these continuances. That's my exhibit.

THE COURT: If you want to introduce the whole file you may do it.

MR. FAWER: Okay.

BY MR. FAWER:

Q. Going to Defendant's Exhibit 6, this is the article that appears in the paper, I guess there's TV coverage as well, splashed on the front page, I think you testified about it this morning, about the case being passed to the inactive file. Right?

A. Yes.

MR. FAWER: Your Honor, I would offer this and ask to read it to the jury at this point.

THE COURT: Very well.

MS. LITTLE: We ask that we be able to read it, first. No objection.

THE COURT: All right.

MR. FAWER: Ladies and gentlemen, this is a copy of the January 7, Hattiesburg American, Hattiesburg newspaper, it's a copy obviously and on the page you have Weldy --

BY MR. FAWER:

Q. John Weldy was the judge. Is that correct?

A. Yes, sir.

Q. He was the judge who was going out of office the end of 1982, was he not, and it was one of his last acts was the signing of the passing of the case to the files. Right?

A. Yes, sir.

MR. FAWER: Okay. (Mr. Fawer reads Defendant's Exhibit No. 6 to jury.)

That was on January 7th. Tell me, I take it -- well, let me ask the question this way: Did you have occasion to speak to your father, did your father talk to you about the fact that the case was passed to the files at that time?

A. At the time the newspaper article come out?

Q. At the time that he gave the order to your wife, the time of the newspaper article?

A. Yeah, I talked to him about two days later.

Q. Okay. And he -- two days after you got the order?

A. Uh-huh (yes).

Q. He was pleased, was he not?

A. Well, I just called him to thank him for it is all I did.

Q. Thank you for giving your wife the order?

A. Yes.

Q. Merry Christmas and that's the end of it?

A. That's it.

Q. Okay. That was the sum total of your contact at that time?

A. Right.

Q. Then comes the publicity of January 7th, and 19 days later, what happens?

A. It was brought back into the active file.

Q. You were not shown any document bringing it back to the files this morning, were you?

A. I don't think so.

Q. Okay. Let me see if we can show it to you now. Let me show you what's been marked Defendant's Exhibit 7, which is in two parts. It is the motion of the state to take your case and reinstate it on the active file, and secondly, it is the order of Judge McKenzie placing it back on the active files, correct?

A. Right.

Q. And I take it Judge McKenzie was now the judge that had taken over from Jack Weldy, correct?

A. Correct.

MR. FAWER: Your Honor, I would offer Defendant's 7 and ask to read to it the jury.

MS. LITTLE: No objection.

THE COURT: May be received.

(Exhibit No. D-7 marked).

BY MR. FAWER:

It is dated, ladies and gentlemen -- two documents. First is the motion of the district attorney of Forest County, Paul Bud Holmes. It's a motion made in court in the Drew Fairchild case on January 26, 1983.

(Exhibit D-7 read.)

Q. So I take it, if I understand correctly, your case was in an inactive status for 33 days, correct?

A. Yes, sir, that would be about right.

Q. And it surprised you when it came back out?

A. Yes, it did.

Q. It was your understanding that passing it to the files sort of ended it, but you now found out otherwise, correct?

A. Correct.

Q. Had you read the newspaper? Do you recall reading the article that is Defendant's Exhibit 6, the one I read a minute ago?

A. Yes, I remember reading it.

Q. Do you remember reading the last paragraph which expressly said in it, that passing the case to the file doesn't mean it's dead, it can be brought back at any time, right?

A. I'm sure that's what it says, but I don't remember that paragraph especially, no.

Q. It didn't -- you were hoping that wasn't the case here, right?

A. Correct.

Q. Okay. 33 days later it's back there, correct?

A. Correct.

Q. And it's being back there generates some publicity as well correct?

A. That is correct.

Q. When that publicity came, once again the Fairchild name w smeared across the front page, correct?

A. That is correct.

Q. Let me show you what I've marked as Defendant's Exhibit 3 There is the headline, January 27, Hattiesburg American, firs page, first column on the right, Fairchild case returns to active files, correct?

A. Correct.

Q. Okay. Fair to say, did you talk to Wiley Fairchild about this?

A. I really don't remember, Mr. Fawer.

Q. Did word come back to you he was very upset about what had happened now?

A. He very well could have been. Like I say, it's been so long ago, I was going through a lot of stuff, too.

Q. I realize it's a period of time ago, it's January of 1983. Happened yesterday, three years ago.

A. All right.

Q. In any event, on -- I take it in your brief, whatever conversations you had with Mr. Fairchild, is it fair to say, seemed to be bothering -- what was bothering him so much was that the name Fairchild was continuing to be smeared in the paper, right?

A. Yes, sir.

Q. Fair to say he's a man that's very proud of that name?

A. Yes, sir, he's very proud of it. Has a right to be proud of it.

Q. I understand that. He has built a successful business, he has been a substantial contributor to some very worthwhile charities, is that correct?

A. That's correct.

Q. Particularly in this area?

A. Yes, sir.

Q. Okay. This is the kind of publicity that he did not like and angers him, correct?

A. That's correct.

MR. FAWER: May I read this portion to the jury?

THE COURT: Very well.

MR. FAWER: Thank you. "January 27. Hattiesburg American. Fairchild case returns to active files. Drug smuggling case against Reddit Andrew Drew Fairchild was returned to the active files in Forest County Circuit Court Wednesday after elusive co-defendant surrendered to authorities."

Q. By the way, the day that was returned to the files, the day before, Watkins was arraigned in court that same day, correct?

A. I think that's correct.

(Exhibit No. 8 read.)

Q. I take it that was in the latter part of January of 1983, correct?

A. Yes, sir.

Q. Okay. For the balance of that year, is it fair to say that there was a series of motions being made, some publicity given to them, by Watkins' attorney trying to have the trial away from Hattiesburg and there were motions, pretrial motions leading to a trial at the end of the year, correct?

A. Yes, sir.

Q. You had nothing to do with it, but you could see that was going on, am I right?

A. Yes, sir.

Q. You knew that Watkins intended to fight going to trial as far as you know?

A. As far as I knew, yes.

Q. You were going to be a witness?

A. Yes.

Q. And that for all practical purposes your sentencing wasn't going to take place until the Watkins case was disposed of?

A. That's true.

Q. Okay. At the end of that year, just prior to his being brought to trial, Watkins disappeared again, didn't he?

A. Yes, sir.

Q. Rather an elusive individual, isn't he?

A. He sure is.

Q. Hasn't been heard of since?

A. I haven't heard from him.

Q. Nobody else has as far as you know?

A. Not as far as I know.

Q. Okay. We do know he flies planes, don't we?

A. Yes, sir.

Q. In any event, at that point in time, to your knowledge, was Bud Holmes leaving office at the end of 83?

A. Yes, I think he was.

Q. That was the end of his four year term, correct?

A. Correct.

Q. What happened to Bill Porter in November of that year, just prior to that?

A. He was in, involved in a plane crash in the gulf, presumably died.

Q. He died in that plane crash November 4th, right?

A. Correct.

Q. In fact, Bud Holmes was in that plane with him at the time, am I right?

A. That is correct.

Q. Bud survived, Bill Porter died?

A. That's correct.

Q. Okay. As you said before, they had been friends?

A. Yes, sir.

Q. Did you have occasion to speak to Bud at the latter part, the end of 1983, to Bud Holmes before he left office?

A. Yes, sir, he called me couple days before he went out of office, told me he wanted to dispose of my case.

Q. Okay. When you say dispose of it, he alone had made an arrangement with you and Porter that he would, that you would be placed on probation and would not have a jail sentence in exchange for pleading guilty, correct?

A. That is true.

Q. He was leaving office, Porter was now dead?

A. True.

Q. You were the only other person, right?

A. Right.

Q. Was he in effect telling you, let's dispose of it now before I leave office?

A. Yes.

Q. He was prepared to do that, even though you had not yet testified in the Watkins case?

A. That's true.

Q. Okay. Did you agree to do it or did you say no, I would just as soon as wait a while?

A. No, I told him, based on my conversation with Bill Porter at the time the thing had been passed to the files, got all the publicity, I told him that Bill had said the thing had been passed to the files, that's where it was going to say stay, don't worry about it.

Q. You told that to Bud?

A. Sure.

Q. That is something that Bill had mentioned to you at the time it had been passed to the files? Bill Porter?

A. Yes.

Q. Okay. When the case came off -- that was before it was reactivated, correct?

A. It's the time that we got all the publicity about it, right

after it was filed, something.
Q. Okay. Then the case did get reactivated, we have him reactivating the case?
A. Right.
Q. We have the publicity reactivating it?
A. Yes.
Q. Do you talk to Bill Porter, what are you talking about, there it is back in active status?
A. He said don't worry about it.
Q. That's all he said?
A. He said don't worry about it, his words, damn thing is passed to the files, that's where it going to say.
Q. Did you say to him, wait a minute, it's now back from the files?
A. No. Bill had been drinking at the time, I didn't argue with him then.
Q. You really --
A. Didn't really.
Q. You didn't put much stock in what he had to say?
A. Well, he said it, he's an attorney, that's what I paid him for.
Q. How good an attorney?
A. He don't take -- if you don't take your attorney's advice they say you're a damn fool.
Q. Tell the jury what you thought of Bill Porter as an

attorney?

A. Not very much.

Q. I realize, that is not something you've just concluded, you thought that all along?

A. Sure.

Q. Okay. In any event, Bud mentions to you about wanting to get rid of it, you raise the subject you thought it was over with from passing to the files, correct?

A. Correct.

Q. Was this a phone call? Where did the conversation take place?

A. It was a phone call Bud made to me at my home.

Q. Okay. He told you, hey, it's back on, you've got to go through the sentencing?

A. Yeah, he told me I had no agreement with Bill on your case.

Q. Okay. He said that he had no agreement with Bill Porter?

A. Right.

Q. Okay. Except the agreement, the plea agreement that you had. He wasn't backing off that?

A. No, he wasn't backing off on that.

Q. Okay. It was no agreement that the case was going to be left in the inactive status, that's what he was telling you?

A. Right.

Q. Okay. Did that end the conversation?

A. Well, he wanted me to give him an answer by four or four thirty that afternoon.

Q. As to whether or not you wanted to dispose of it before he left office?

A. Yeah.

Q. How close to the end of December was this?

A. It wasn't very long, just, I would say maybe a week, less than a week.

Q. He gave you short of a short fuse to operate with?

A. Yes, he did.

Q. Did you talk to Wiley, try -- you didn't have an attorney at the time, did you?

A. No, I didn't.

Q. Did you and Bud talk about that? Did he say you ought to get an attorney?

A. Yes.

Q. Porter's dead, what did you do?

A. I called my father.

Q. Okay. What did your father say?

A. He says, he said hell, I thought it was over and done with.

Q. Okay. Did you go, did you talk to an attorney?

A. Talked to Carroll Ingram about it.

Q. You did talk to Carroll?

A. Yeah.

Q. Did you go to see him?

A. No, talked to him on the telephone.

Q. What did he say to you?

A. He said in effect that it would be best if he didn't handle it, it would be, you know, somebody in his law firm be best for him to handle it.

Q. It was a case of having to appear at the sentencing?

A. Right.

Q. Did you call Bud back, tell him you were going to go ahead with it? How did it work?

A. No, I haven't talked to Bud since that day.

Q. You had the conversation, he gave you until four o'clock to say whether you wanted to go ahead with it while he was still DA, right?

A. That is correct.

Q. Which would have been taking care of the sentencing before December 31st?

A. Right.

Q. You didn't get back to him and nothing happened before December 31st?

A. Right.

Q. Okay. Did you learn around that time, right after your call with Bud -- I don't want you to tell me anything that would be hearsay -- but did you learn of Bud Holmes and Judge McKenzie visiting your father?

A. Yes, I did.

Q. Was that immediately after or day or so after Bud's phone

call to you in that late December period?
A. It's shortly thereafter.
Q. Okay. You were not present, am I right?
A. No, sir, I was not.
Q. Okay. Moving to 84 then, right. Bud is no longer district attorney, right?
A. That's true.
Q. The case, there are several continuances then in 1984, you have a variety of attorneys who appear with you at those continuances, right?
A. Right.
Q. Who filed them on your behalf, right?
A. That's correct.
Q. The appearances are, excuse me. The continuances, one of them is done by somebody in Carroll Ingram's office, and then there is a series of others that are because there is a federal grand jury that has now been convened, correct?
A. Yes. I didn't know anything about those continuances.
Q. About the what?
A. Continuances. I didn't know anything about it.
Q. Just like you hadn't in 1982?
A. Right.
Q. Attorneys were just automatically going and sentencing being put off, right?
A. That is correct.

Q. What you did know is you weren't being called up for sentencing?

A. That is correct. True.

Q. Was there some publicity that the sentencing would be conducted in 1984 or not really?

A. I don't think. I don't think. If there was it was really minute as far as I can recall.

Q. Then the investigation began with the Washington attorneys coming down here and they're talking to you, correct?

A. That is correct.

Q. And you told -- tell the jury, throughout this, the name -- I have never heard you mention the name Judge Nixon. He's the defendant in this case. They started questioning you among other things about Judge Nixon, correct?

A. His name came up, yes, sir.

Q. You told them, did you not, that you knew nothing about Judge Nixon, he had nothing to do with your case, correct?

A. Yes, sir.

Q. Okay. And you went to the grand jury and testified there, right?

A. Yes, sir.

Q. Okay. And that would would been sometime in September of 1984? Right?

A. Yes, sir.

Q. Just about the same time that your father gets indicted?

A. That's true.

Q. All right. And then there's some more continuances because your father's trial is going to come up and we move into -- and then your father pleads guilty. Is that true?

A. That's true.

Q. You have never discussed that plea as such with him?

A. Well, back at the -- Well, we were talking pretty civilized at that time. Yes, we talked about it.

Q. When was it you and your father's relationship stabilized or got a little better than it had been?

A. It had gradually been picking up several months before the Grand Jury investigation started so --

Q. Your father went to the Grand Jury in July of 84, July 18. You testified in September of 84?

A. That's true.

Q. So just using those dates as an anchor, when do you think your relationship sort of, you began talking to one another?

A. I'm going to say about the latter part of May, something like that.

Q. May of 1984?

A. Sure and you then come down to a point in May of 1985, your father has entered into a guilty plea and he doesn't go to trial. Is that correct?

A. That is correct.

Q. And the only thing left of course is we are back where we started from, you still have got a state sentence that you have to deal with. Right?

A. That's true.

Q. And there's nothing that's been filed in federal court against you?

A. That is true.

Q. And your father, your father has provided your attorneys for you at this time?

A. Yes, he has.

Q. And you have Carl Kepper for a period of time and Barry Hess?

A. Barry Hess, right.

Q. Barry Hess who represented your father is now representing you. Is that correct?

A. That's correct.

Q. And you learn in March of 1985 that this judge, Judge McKenzie, he sends a message that he's not going to live with the agreement that's been negotiated between you and Bud Holmes, namely no jail time?

A. That's true.

Q. And he says it loud and clear?

A. That's true.

Q. And it bothers you, it upsets you?

A. Yes, it does.

Q. If that's so, there's going to be serious jail time. Is that true?

A. That's true.

Q. Tell the jury, how much did did he tell you you were going to get? -- Tells you, tells the press, I guess.

A. Tells the news media, I guess. It's five years.

Q. That's serious time?

A. One day is serious time, sir.

Q. I don't doubt that for a minute. In any event you have a problem in March of 85, how do you get away from that five year sentence because you believe that's what he's going to do. Is that true?

A. That's true.

Q. And the decision is made, there are these people who are from Washington here looking into this whole matter, Reid Weingarten. Right?

A. Yes, sir.

Q. Maybe we can get some help from them. Right?

A. Right.

Q. What kind of help can we get? Maybe what we can do is if we can get ourselves indicted in the federal court, that will eliminate the right of the state to prosecute or in some way it will take precedent over the state case. Right?

A. That is true.

Q. And so your attorney, pretty good attorney, Barry Hess. Right?

A. Very good attorney.

Q. He works out a deal. Reid, indict him, we'll withdraw the guilty plea in the state court, you go -- we'll go in and get a federal indictment, you just file this federal indictment, we'll plea and then he will be sentenced on the state level. Correct?

A. I'm sure -- I don't quite follow you. You say I was going to be sentenced on the state level.

Q. Excuse me, I said state, I meant the federal level?

A. Yes.

Q. Excuse me. Glad you corrected me. You withdraw the state plea, you go into federal court and take whatever medicine is going to be meted out on the state level?

A. That is true.

Q. Mr. Weingarten accomodates you, he indicts you, allows you to be arraigned?

A. Right.

Q. No time?

A. None whatsoever.

Q. And you get a six month sentence to serve at Tallahassee?

A. That's true.

Q. And which you served. As you point out, one day is lot of time in jail?

A. That's right.

Q. But four and a half months, that's what you served?

A. That's true.

Q. It's a lot better than five years?

A. Lot better.

Q. Excuse me?

A. Lot better.

Q. You then get an agreement out of McKenzie, make him to make a commitment whatever you get sentenced in the federal court, that will take care of the state jail time?

A. That deal was made before I was ever sentenced by the federal people.

Q. Exactly. That deal was cut on July 8 of 1985. Right?

A. Yes, that's true.

Q. And so that the deal was if, you correct me if i'm wrong, if you got 20 years in the state sentence, five years, whatever it is, the max I guess was five at that point. Right?

A. Right.

Q. But if McKenzie gave you five years in jail on the state sentence and the federal government gave you one day, two days, six months, whatever the federal jail time was, that was going to satisfy your state jail commitment. Right?

A. That's true.

Q. And that's precisely what occurred. Am I right?

A. That's right.

Q. You got six months' sentence in the federal court and thereby how much did McKenzie sentence you to?

A. Three years.

Q. As far as you know, you have fully satisfied that, have you not?

A. I --

Q. Excuse me. By virtue of your service at Tallahassee?

A. According to my state sentence, yes.

Q. Throughout all of this that we have been going on since you took the stand at, sometime around eleven o'clock this morning, as far as you knew, Judge Nixon had not one whit to do with any of it. Correct?

A. As far as I know, yes.

MR. FAWER: Thank you very much. Will you indulge me one moment? The only thing else, Judge, I would ask to offer exhibits 6, 7 and 8. I have not offered those in evidence yet technically.

THE COURT: Any objection?

MS. LITTLE: No objection. May I have a moment before redirect?

THE COURT: Yes. You may take a moment.

MS. LITTLE: Thank you, Your Honor. Just two questions on redirect.

REDIRECT EXAMINATION

BY MS. LITTLE:

Q. Mr. Fairchild, let me take off where Mr. Fawer left off. In May of 1980 when you had the memo of understanding with the

United States, were you going to go to prison?

A. No.

Q. How about after you were indicted with the state and you had an agreement with the state, under that agreement were you to go to prison?

A. No, ma'am.

Q. While you were waiting to be sentenced by the state, did you ever have any understanding that you were going to go to prison?

A. No, ma'am.

Q. It wasn't until March of last year, I take it -- Is there an objection?

MR. FAWER: There will be. It's called a leading question. You're on direct. He's the witness.

BY MS. LITTLE:

Q. Mr. Fairchild, in March of this year, did the situation change?

A. Yes, ma'am.

Q. And what did Dickie McKenzie, Judge Dickie McKenzie do in March of this year?

A. He told one of the attorneys, Carl Kepper, that he would not go through with that original deal.

Q. Was there any additional evidence of drug trafficking by you at that point?

A. No, ma'am.

Q. Any additional evidence of wrongdoing by you?

A. No, ma'am.

Q. Had anything about your criminal conduct changed?

A. None whatsoever.

Q. Had anything at all changed?

A. Nothing except the, Judge McKenzie's decision.

Q. Of course at this point -- Were you cooperating with the federal government at this point?

A. Yes, ma'am.

Q. Who were you to testify against in the federal investigation?

A. At Bob's trial.

Q. The Bob Royals' trial?

A. The Bob Royals' trial, yes.

Q. How about Bud Holmes' trial? Were you to testify there?

A. Yes.

Q. When Judge McKenzie stated that the plea agreement was going to be reneged did that strike you as fair?

A. No, it did not.

Q. Did it strike you as proper or right?

A. No.

MR. FAWER: Excuse me, Your Honor. Are we trying Judge McKenzie here? I thought the man was Nixon and have yet to hear his name.

MS. LITTLE: Mr. Fawer brought it up.

MR. FAWER: I brought it up for a very different purpose, not as to whether it was fair.

MS. LITTLE: May we go to the bench on this?

THE COURT: Yes.

(AT SIDE BAR:)

MS. LITTLE: Your Honor, Mr. Fawer brought this entire matter up in an apparent effort to tarnish the federal government, to indicate that the federal government had something to do with this deal of Judge McKenzie. I think I need to clarify that.

MR. FAWER: I don't think I brought it to up to suggest you had anything to do with the deal with Judge McKenzie, but Judge McKenzie decided he wouldn't live with the publicity that was floating around. You were the tool to use to get around McKenzie.

MS. LITTLE: I think I need to clarify it.

THE COURT: Go ahead. (IN OPEN COURT:)

BY MS. LITTLE:

Q. Mr. Fairchild, in March of 1985, when Judge McKenzie decided not to accept your plea agreement, did that strike you as fair?

A. No, ma'am, it did not.

Q. Do you have any idea why that happened?

A. I've got ideas, I don't know how valid they are or not.

MR. FAWER: Your Honor, I would object to this.

MS. LITTLE: All right.

MR. FAWER: It's called withdrawing. Do you withdraw it?

MS. LITTLE: Yes, I withdraw it.

BY MS. LITTLE:

Q. I take it, Mr. Fairchild, you had already entered into two agreements that you would not go to prison. Is that true?

A. That's true.

Q. Was the handling of your case, the changing in the handling of your case in March of 1985 inconsistent with that understanding?

A. Very inconsistent.

Q. Did you see any basis for that change?

A. No.

Q. What did your lawyers do at that point?

A. They had me indicted by the federal government.

Q. I think Mr. Fawer stated before lunch that your lawyers used the federal government to keep you out of prison I think he said that. Is that right?

MR. FAWER: There's a record and that was not my question. I asked a question whether his lawyers used the federal government to accomplish the purpose which he says they did do, to minimize the time he spent in jail. With that correction, I would be happy to be quoted on it.

MS. LITTLE: Okay.

BY MS. LITTLE:

Q. Okay. Is that a fair statement?

A. Yes, ma'am.

Q. What did the federal government do to you?

A. They indicted me and I pled guilty and was sentenced to three years, to serve six months and two and a half years on probation.

Q. Did the federal government keep you out of prison?

A. No, ma'am, they put me in prison.

Q. And after you were in prison you filed a motion to have your sentence reduced, did you not?

A. Yes, ma'am.

Q. What was the federal government's response to that?

A. They turned it down.

Q. In fact at your sentencing before Judge Carr did the federal government recommend that you not go to prison?

A. No, just the opposite.

Q. And that was Mr. Weingarten, was it not?

A. Mr. Weingarten.

Q. Has the federal government cut you any breaks in this investigation?

A. No, ma'am.

Q. All right. Now getting back to just one small question about your relationship with your father, --

A. Yes, ma'am.

Q. -- you were not on speaking terms with him during the 1979 1980 period. Is that right?

A. That's true.

Q. I take it your father -- Mr. Fairchild is your father, Wiley Fairchild is your father?

A. Momma said he was.

Q. And did you know him fairly well?

A. Yes, ma'am.

Q. And was he pleased that you were in trouble with this drug deal?

A. Not hardly.

Q. What was his reaction on to that?

A. I guess he got as mad as I've ever seen him get mad before.

Q. Was he embarrassed?

A. Naturally. We all were.

Q. Why was he embarrassed?

A. Well, he's had his name drug through the newspaper. He didn't like that.

Q. Just one other matter. At the time of your plea in January of 1982, in state court, I think in going through these records it's been established that Mr. Watkins had been caught in Texas. Is that right?

A. Yes, ma'am.

Q. In fact that's why you entered into these plea negotiations, the question was put to you by Mr. Holmes, it's either him or you. Is that right?

A. That's correct.

Q. And you were going to be sentenced in March and it was continued at that time because of your back operation. Is that right?

A. Yes, ma'am.

Q. Mr. Pawer asked you, I believe, and I'm sure he will correct me if I'm wrong, that when you were waiting to be sentenced, were you waiting to be sentenced until after you testified against Robert Watkins? Did it have anything to do with Robert Watkins -- Did your sentencing have anything to do with Robert Watkins as far as you knew?

A. As far as I knew, no.

Q. And then after that first continuance, the subsequent continuances were worked out entirely by your lawyer. Is that right?

A. That's true.

Q. Did you have any idea of what conversations were going on between your lawyer and Mr. Holmes?

A. None whatsoever.

Q. And in October of 1982, Mr. Watkins was caught in Florida. Is that right?

A. That's true.

Q. Just like Mr. Watkins had been caught in Texas prior to your plea. Right?

A. True.

Q. So you're basically in the same position you were in in October of 1982 as you were in January of 1982. Is that right?

MR. FAWER: Excuse me. I don't really want to object too much but this is a habit, she's leading the witness and she's on direct exam. I think there's a distinction between that and cross. I ask she phrase the questions in such a way to get the information from the witness on direct examination.

MS. LITTLE: I'll rephrase the question.

BY MS. LITTLE:

Q. Mr. Fairchild, in October 1982 were you in the same position that you were in essentially in January of 1982?

A. Yes, ma'am.

Q. And were you sentenced?

A. No, ma'am.

Q. In fact the case was passed to the files. Is that right?

A. Yes, ma'am.

Q. Do you have any knowledge of arrangements that Mr. Holmes may have had with Mr. Watkins?

MR. FAWER: With whom?

MS. LITTLE: Mr. Watkins.

THE WITNESS:

A. No, ma'am.

BY MS. LITTLE:

Q. In January of 1983, when the case was reinstated, was Mr.

Watkins in custody in Mississippi? Do you know?

A. He -- I really don't recall. He could have been.

Q. Well, in the order that was read by Mr. Fawer earlier today, do you remember with reference to that?

A. He read so many.

Q. Well, okay.

A. I just don't remember that.

Q. Was there any move to have you sentenced in January of 1983?

A. No, ma'am.

Q. Was there any move to have you sentenced at any time in 1983?

A. No, ma'am.

Q. Okay. Did anything at all happen in your state case until 1985?

A. No, ma'am.

MS. LITTLE: The only other thing I have, Your Honor, is the request I made earlier to make the remainder of the file a part of the record.

MR. FAWER: No objection.

MS. LITTLE: Well, mark it government's next in order.

THE COURT: That will be Government's Exhibit what?

MS. LITTLE: Six.

THE COURT: It may be received.

(Government's Exhibit No. 6 marked.)

MS. LITTLE: That's all I have.

MR. FAWER: Your Honor, may I have one thing on the subject she just covered?

THE COURT: All right.

RECROSS-EXAMINATION

BY MR. FAWER:

Q. Drew, you have told us you're not exactly a hardened criminal but you have some familiarity with how the system works. Right?

A. That's true.

Q. When somebody cooperates or agrees to cooperate, they first testify before they are sentenced, don't they?

A. That's usually the way it works, yes, sir.

Q. Tell the jury why if you do it the reverse way, it don't work out too good for the government. Tell them.

A. Well, I guess after you have done it, there's no need, can't nobody put no --

Q. Let's work on that for a minute. If you get sentenced and you get your probation and then you get to testify, there's no incentive, you don't care what that testimony is. Right?

A. You have already done it.

Q. Right. The hook isn't in your neck unless your sentence is being held over your head. Right?

A. That's true.

Q. Okay. So since time immemorial sentences are always deferred from your understanding, in the normal course, until after the cooperation is secured in the form of testimony. Am I right?

A. That's true.

MR. FAWER: Thank you very much. No further questions.

MS. LITTLE: No further questions.

THE COURT: All right. Thank you, sir. You may step down and we'll take a short recess.

(Afternoon recess.)

THE COURT: All right. Who do you have next?

MR. WEINGARTEN: George Phillips.

DIRECT EXAMINATION

BY MR. WEINGARTEN:

Q. Good afternoon. Your name, sir?

A. George Phillips.

Q. Spell your last name, please?

A. P-H-I-L-L-I-P-S.

Q. Where do you live, sir?

A. My home is Hattiesburg. I live in Jackson a good deal of the time also.

Q. Why is that?

A. Our main headquarters office is in Jackson.

Q. All right. Well, you better identify yourself first. Who are, sir?

A. I'm the U. S. Attorney for the southern district of Mississippi.

Q. To be a U. S. Attorney do you have to be a lawyer?

A. Yes.

Q. How long have you been a lawyer?

A. Since 1973.

Q. In the briefest summary tell us what you have done as a lawyer.

A. I have been in private practice here in Hattiesburg, I began as an associate with the firm of Johnson, Pittman and Pittman. I was then a partner with another lawyer here in a Hattiesburg named Larry Morris and then I was on my own until I got this job as U. S. Attorney. I was elected county prosecuting attorney for Forrest County for two terms and was in my second term when I was appointed U. S. Attorney.

Q. When was that? When was your appointment?

A. July 1, 1980.

Q. And where does the U. S. Attorney's office house itself in the Southern District of Mississippi?

A. We have five offices, two staffed offices, headquarters office is in Jackson, the other staffed office is in Biloxi.

Q. How many lawyers work under you?

A. Now?

Q. (Nods yes.)

A. 14.

Q. And when you first started, how many did you have?

A. Seven.

Q. In the most general terms what are the duties and the responsibilities of the U. S. Attorney?

A. We represent, we have two sides of the house, as we call it, we have the civil side and the we have the criminal side. On the civil side we represent the government in all litigation that involves the federal government; that is, with all the federal agencies are our client agencies, the SBA, the Farmers' Home, all the different federal agencies like that. On the criminal side, we are the same thing really as a state district attorney's office. We handle federal jurisdiction criminal cases that occur in our district.

Q. In your capacity as U. S. Attorney have you come to know Walter Nixon?

A. Yes, sir, I have.

Q. Is he the gentleman seated at the counsel table, seated right between Mr. Pawer and Mr. Larson?

A. Yes.

Q. Identify him who he is in terms of legal in the southern district?

A. He is the Chief U. S. District Judge for this district.

Q. And how long has he been the chief judge?

A. Oh, chief judge, I'm not exactly sure. He of course has been one of the acting U. S. district judges since I was U. S. Attorney and before, and since I've become U. S. Attorney he has become the chief judge.

Q. Did your office become involved in a drug bust at the Hattiesburg airport in 1980?

A. Yes, sir, we did.

Q. In what context, or how did your office get involved?

A. Well, there was a bust, I believe it was August 4, 1980 here at the Hattiesburg airport involving first of all the U. S. Customs agents and it was of course through them we became involved.

Q. Why do you say of course? Maybe the jurors don't understand that.

A. U. S. Customs of course is one of the federal agencies and they followed this airplane in that it fit the description for smuggling in that it came into an unidentified airplane that came on the scope and they followed it to the Hattiesburg airport.

Q. And arrests were made?

A. Yes.

Q. What were the first legal steps that were taken by your office?

A. Of course they were arrested and arraigned, what not, immediately and then at the next term of the Grand Jury, which is customary when someone is arrested on complaint or out in the field, rather than by indictment, and that occurred, I believe, on August 19, three of those individuals were indicted.

Q. By your office?

A. By the Grand Jury.

Q. Excuse me.

A. By the Grand Jury but our office handling it.

Q. Your office prepared the indictment and presented it to the Grand Jury?

A. Yes.

Q. I hand you what has been marked as Government's Exhibit 7 and ask you if you can identify it, sir.

A. Yes, sir. This is a copy of the indictment against Nathan, Torres and Hatfield.

Q. And was that prepared in your office?

A. Yes, sir.

Q. Under your supervision?

A. Yes, sir.

Q. Did you take a role in this investigation?

A. Yes, I did.

Q. Did you take an interest in it?

A. Yes, I did.

Q. And why was that?

A. Well, primarily because it was Hattiesburg and Hattiesburg is home to me. I'm not involved in all the cases, but I was interested in this one because it occurred at the Hattiesburg airport.

Q. In the most general sense, what was the evidence that was developed to support that indictment? Do you know?

A. Very generally it was that, I believe, two of these individuals, as I recall, were arrested at the airport, at the time they made the stop, the a rest. Another one I think was later arrested, I believe, at a local motel, after developing information concerning his involvement, also.

Q. Did the federal government develop any informants in the course of the first days of the investigation?

A. Yes.

Q. When I say the federal government, does the federal government have assistance in Mississippi from any local units in a case like this?

A. You mean local law enforcement units?

Q. Yes.

A. Yes. We work all the time with city police departments, with county sheriffs' offices and Mississippi Bureau of Narcotics and Mississippi Highway Patrol.

Q. Did any evidence develop that the smugglers may have had help on the ground?

A. Yes.

Q. How did that come about?

A. That information I believe was first developed from an individual by the name of Malone, who was one of the subjects who was identified early on as being involved and he gave information, as I recall, concerning Drew Fairchild's involvement and assistance on the ground.

Q. All right. Following that, did your office have contact with Drew?

A. Yes.

Q. And describe that contact.

A. That contact consisted of meetings with Fairchild, the agents involved, who were Mississippi Bureau of Narcotics agents, as I recall, and Fairchild and his lawyer.

Q. All right. Did you participate in this meeting?

A. Yes.

Q. I hand you what's been marked Government's Exhibit 2 --

MR. WEINGARTEN: We move into evidence Government's Exhibit 7, Your Honor.

MR. FAWER: No objection.

(Government's Exhibit No. 7 marked.)

BY MR. WEINGARTEN:

Q. Have you ever seen Government's Exhibit number 2?

MR. FAWER: Excuse me, Your Honor, just for the record so it's clear, the Government's Exhibit Number 7 has been identified as the indictment in August of 1980, but I don't think it was identified in terms of who are the defendants in that.

MR. WEINGARTEN: I thought Mr. Phillips had said.

THE WITNESS: Nathan, Torres and Hatfield.

MR. FAWER: I beg your pardon. I'm sorry.

THE WITNESS:

A. Yes, this was the memorandum of understanding that was developed and signed between our office and Fairchild, Mr. Fairchild and his lawyer, William F. Porter.

BY MR. WEINGARTEN:

Q. All right. Summarize what that agreement holds.

A. This is pretty much the standard memorandum of understanding. When we do one of these, we do them in writing. This says, basically, that he's going to cooperate with the government in exchange for that cooperation he was to receive a recommendation of five year term of imprisonment, suspended, probation for five years and a fine of $15,000. It's further stated that he will be truthful in all aspects of his cooperation, that it completely reflects the agreements and promises, and that he will waive indictment and proceed by information, which is another way that we charge people in the federal system.

Q. Let me ask you this, Mr. Phillips: Did you authorize this agreement?

A. Yes, sir, I approved it.

Q. And why did you do that?

A. Well, it's what the agents wanted to do, first of all, who were working the case, and once again that's fairly customary and routine. If you have got somebody on the inside that you can do what we call rolling or flipping the defendant, to secure additional information concerning all of the people that might be involved in a case, and the idea was to get everybody involved in the case and to know all aspects of the case and who all was involved and their roles and that sort of thing.

Q. What happened to the three defendants who were indicted?

A. They later pled guilty and in February the next year, which would have been 81, they were sentenced, I believe, by Judge Cox.

Q. Do you recall what their sentences were?

A. Not exactly, but basically they were five year terms of imprisonment and I think some fines.

Q. Okay. All right. You mentioned Judge Cox. How many judges were there in the southern district of Mississippi at that time?

A. Three active judges.

Q. All right. Did judge Nixon have any involvement at all in the case that was indicted, the indictment represented by Government's Exhibit 7?

A. No, none.

Q. Getting back to Drew, did he meet the terms of his agreement, as far as you were concerned?

A. No, sir, he did not.

Q. Why not?

A. Well, basically, as we came to learn later on, he was just, was we thought and we put it, leading us on a wild-goose chase. We did not feel like he was cooperating, that he was being truthful and that he was doing all the things that he had agreed to do.

Q. And how did you respond?

A. We intended to prosecute him and let him know.

Q. Well, did you consider the agreement binding upon you?

A. Oh, no. There's a paragraph in here that says, let me find it, it is further understood that should Fairchild fail or refuse as to any part of this memorandum all representations made by the government are rescinded.

Q. Did you in fact prosecute him?

A. No.

Q. Why not?

A. Sometime shortly after learning that he was not cooperating, not being truthful and what not --

Q. Before you get to that, do you recall an occasion when you slammed a door in his face or when you expressed great displeasure?

A. I don't recall slamming a door in his face but I do recall expressing great displeasure. I was rather miffed at him, yes.

Q. Was that in connection with his failure to cooperate?

A. Yes, sir.

Q. Tell us why you never did prosecute Drew Fairchild.

A. As I said, which pressed intent to prosecute him and sometime in the early part of summer, I'd say, or late spring, 81, Bud Holmes, who is the district attorney here in this district where we are now, called and asked if he could take the case or did we mind or words to that effect, if he took the case and prosecuted it.

Q. All right. Were you familiar with Mr. Holmes at that point?

A. Yes.

Q. And how were you familiar with him?

A. He was the district attorney here, first of all, and I was the federal counterpart. Of course I know all the district attorneys in this district. And, secondly, I was from Hattiesburg, and, thirdly, he had been district attorney for about six months during the period that I was still county attorney here and of course the district attorney and county attorney prosecute cases together.

Q. So you knew Bud Holmes when he called you?

A. Yes, I did.

Q. And what again did he say?

A. He asked, he asked about the status of the case, as I recall, which I think I briefly gave a synopsis of it, and then asked if we cared or did we mind or words to that effect if they took the case and prosecuted it.

Q. What did you tell him?

A. I told him no, we didn't mind.

Q. What did you tell him the status of the case was?

A. I believe that Fairchild had breached the agreement and was not doing what he said and was not cooperating and of course that we intended to prosecute him.

Q. And then he made his request?

A. Yes.

Q. And what was your response?

A. Well, I said fine, certainly.

Q. Why did you respond that way?

A. Well, we get requests like this fairly routinely, especially in drug cases, state district attorneys very often want to handle some aspect of drug cases that occur in their districts. That's not uncommon. Secondly, we have a policy of deferral to state prosecution -- I say we, I mean the Department of Justice, as well as our office individually, we have a policy of deferring to state and local prosecutors, unless there is a, quote, compelling federal interest.

Q. If Mr. Holmes had not asked for the case, would you have thought of giving it to him or passing it to him?

A. No, we wouldn't.

Q. Would that ever have occurred?

A. No. We had already prosecuted part of it.

Q. What would have happened to Drew had Bud Holmes not made the call?

A. We would have proceeded like we do with any criminal case. He would have been indicted, assigned a number just like this indictment and set down for trial.

Q. Had he been indicted in the Southern District of Mississippi, how would the judge selection have taken place?

A. It works on what we call a wheel or -- it's not really a wheel, but it goes on a rotating basis.

Q. Random?

A. Yes, it is random. It's made up so it's not a standard rotation, either. Not even our office can figure out which judge is going to be assigned which case.

Q. Did it come to your attention in early 1984 that the Department of Justice was to begin an investigation in the Southern District of Mississippi?

A. Yes.

Q. Were you involved in that?

A. In the investigation? No.

Q. Why were you not?

A. Well, because the investigation surrounded this matter and the case and Judge Nixon, and Justice Department policy, you're automatically recused from being involved in any part of a case involving a judge or an official in your district.

Q. Did you have contact with Judge Nixon about the investigation?

A. Did I have contact with him?

Q. Yes.

A. I just had a conversation with him, one conversation with him after he was interviewed by the FBI or whoever this was that interviewed him.

Q. Do you recall around when that was?

A. I really don't.

Q. What was the context of the conversation?

A. He just asked about what was this all about, and where did it start and where was it, you know, what was the purpose of it, that sort of thing. Just a general conversation.

Q. Did you explain the rule that you would be recused completely from the investigation?

A. Yes, I told him that I didn't know all the ramifications or anything else about it at that time. As I recall I just told him that we didn't have anything to do with it, it was being looked at by the Department.

Q. During that conversation, did Judge Nixon tell you about any contact he had or may have had with Wiley Fairchild or Bud Holmes about the Drew Fairchild case?

A. I think that he mentioned that whoever interviewed him had asked him about Fairchild. I don't recall him saying anything about Bud Holmes at that point.

Q. Did he specifically tell you that he had had contact with Wiley Fairchild or Bud Holmes about the Drew Fairchild case?

MR. FAWER: I would object, Your Honor, to the form of the question. He can ask what was asked, you know, what was the subject of it. I don't think he ought to be going on, or putting words into the mouth of this very able witness who is on the stand. He was privy to the conversation, he can be asked what was said.

THE COURT: First find out if he had such a conversation.

MR. FAWER: He stated already he had a conversation, he's now asking did he talk about a specific point.

THE COURT: All right. Ask the question.

THE WITNESS: I'm sorry, could you ask that again?

BY MR. WEINGARTEN:

Q. During the conversation you had with Judge Nixon following the interview, did he mention any contact he may have had with Bud Holmes or Wiley Fairchild about the Drew Fairchild case?

A. No.

Q. At any point subsequent to that conversation, did Judge Nixon mention any conversation he may have had with Judge Nixon or Wiley Fairchild about the Drew Fairchild case?

A. No, sir.

Q. On any occasion prior to the telephone conversation that you've related, did Judge Nixon ever mention any contact he had with Bud Holmes or Drew Fairchild or, excuse me, Bud Holmes or Wiley Fairchild about the handling of the Drew Fairchild case?

A. No, sir, I don't recall him ever saying anything to me about Fairchild.

Q. Is blackmail a federal crime?

A. Yes, sir.

Q. Did Judge Nixon ever report to you that Wiley Fairchild had alleged that Bud Holmes was blackmailing him?

A. Did Judge Nixon --

Q. Ever report to you?

A. No, sir.

MR. WEINGARTEN: Okay. Thank you.

CROSS-EXAMINATION

BY MR. FAWER:

Q. May I, Your Honor? Mr. Phillips, we know each other?

A. Yes, sir.

Q. We've known each other I guess since you became U. S. Attorney and we had some matters -- we've never tried any cases together; we've at lease spoken on occasion?

A. Yes, sir, we've certainly handled cases.

Q. Nice to see you again?

A. You too, sir.

Q. Let me understand something. First, preliminarily, as far as you know, Judge Nixon had absolutely no involvement whatsoever in the federal investigation or federal case, in its broadest perspective, involving Drew Fairchild?

A. That's true.

Q. Just so we understand, the jury may or may not be aware of it, you have in our country, under our system, two parallel systems of criminal justice, is that correct?

A. Yes, sir.

Q. You have the federal system of which you are the highest officer in this district?

A. Yes, sir.

Q. And we have the federal judges such as Judge Meredith and Judge Nixon?

A. Yes.

Q. Wholly independently, we have a state system or county system I guess, state systen with different county prosecutors and judges in each county, correct?

A. Yes, sir, you have county attorneys and district attorneys within each state court district.

Q. And fair to say that at the time Bud Holmes was the prosecuting attorney on the state level, in the Forest County level, you were on the federal level, correct?

A. Yes, sir.

Q. Okay. And it's fair to say, is it not, that as to crimes, or alleged crimes, both state and federal have jurisdiction of the same crime, correct?

A. Yes, sir. Called concurrent jurisdiction cases.

Q. Concurrent jurisdiction. I take it it's fair to say that as a matter of law, take this drug bust we're talking about, the federal government, because of -- there is a federal statute involving such controlled substances, has jurisdiction, but because it happened in Hattiesburg, Forest County DA has jurisdiction as well?

A. Yes, sir.

Q. Is it fair to say also that usually one of the two takes over the matter? I mean usually it's not split down the middle; either the federal or state authorities will run with the case, is that a fair statement?

A. Generally one will have the lead. A lot of times you do split the cases depending on local or out of state or foreign defendants, that sort of thing. Usually someone takes the lead, yes, sir.

Q. Some one is in charge of it and makes the ultimate decisions, correct?

A. Yes, sir.

Q. And in this instance, it was the federal government that initially was in charge of the case, correct?

A. Yes, sir.

Q. The idea, of course, deferring to the state or the state taking over parts of it was very routine, as you pointed out?

A. Yes, sir.

Q. Now, let me ask you this. As I understand it, the first thing -- there are several individuals who were clearly involved and who get indicted right away. Those are the names on that indictment, is that right?

A. Yes, sir.

Q. Including Malone, is Malone one of them?

A. Malone was not in this indictment, no, sir.

Q. Malone was the man who rather quickly became a cooperating defendant, is that true?

A. That's true.

Q. And so that he was not included in that indictment, but he was -- plea agreement was worked out with him, is that correct?

A. Yes, sir, I believe he was later charged by information.

Q. So the jury understands, the only difference between an indictment and information is that an indictment comes through the grand jury process, whereas an information only you sign it as the prosecuting attorney?

A. Yes, sir.

Q. The name --

A. Our office.

Q. Your office. Correct. And the nature of the charges can be identical?

A. Yes, sir.

Q. Person has waived a right to grand jury presentation of such a case, right?

A. On a felony, yes, sir.

Q. In any event, what happened is that three men were charged, the three prime suspects right off. In part you were relying on Malone's cooperation to prosecute them, correct?

A. Yes, sir.

Q. And you learned rather early on that Drew Fairchild, or at least that there were some people on the ground who may have assisted in this criminal activity?

A. Yes, sir, we did.

Q. Okay. In fact, Drew Fairchild had been interviewed in early, in August of 1980, shortly after the bust, drug bust, and apparently had denied any involvement, you're aware of that?

A. Not specifically. As far as the times and whatnot go, I can't recall when that was.

Q. Let me put it to you this way. Before the Memorandum of Understanding or at least before they came to Jackson to talk, there was no indication that Drew had admitted his involvement in it?

A. Correct.

Q. Okay. And of course there was someone else who had to be involved whose name I haven't heard yet, because we knew there was a plane, right?

A. We knew there was a plane, yes, sir.

Q. What about the pilot, was he indicted?

A. No, sir.

Q. You knew his time was Watkins. You learned that shortly thereafter?

A. We learned that sometime after. Initially we even had the wrong name, but we learned later on I think, I believe once again through Malone, who the pilot was.

Q. But he was not under indictment, he was not indicted in the early stages, correct?

A. Correct.

Q. And how did -- as I understand it, is it fair to say you're fairly friendly with Bud Holmes?

A. I'm from here. We certainly worked together.

Q. On occasion you've had lunch together, had a drink together?

A. Yeah, I'm sure we've had lunch together.

Q. You know him? Most likely I guess if you name every attorney a certain age in Hattiesburg you would have known them and had occasion to either socialize or deal with them professionally on some basis?

A. Yes, sir.

Q. Carroll Ingram among them, correct?

A. Yes.

Q. In fact you're fairly friendly with Carroll Ingram, is that a true statement?

A. Yes, sir.

Q. Coming back to this period between the drug bust and the Memorandum of Understanding in mid-November, somehow, some way, Porter, who represented Drew Fairchild, and Drew come up to

Jackson to speak to you, correct?

A. Yes, sir.

Q. Did you receive a call from anyone in the Hattiesburg area to make that appointment with you?

A. Not that I recall. I can't be certain, I don't recall for certain if Porter called and said he was coming up or if he contacted somebody else on the staff, or how exactly that came to be.

Q. Drew Fairchild has said that he had a conversation, he and Porter spoke to Bud Holmes and that Bud suggested the best thing for him to do was to go up and talk to the federal authorities, like yourself, in Jackson, and that he would make a call to set up an appointment. Does that ring a bell at all, whether Bud called you?

A. No, sir, I don't recall him calling me prior to the conversation I've already related.

Q. Whether he did or not, Porter called directly, you obviously were willing and anxious to sit down with Drew in this matter, because he obviously was somebody who a prosecuting attorney would want to talk to, correct?

A. Yes, sir.

Q. In any event, does he -- he and his attorney come up there and speak to you in Jackson?

A. Yes, sir.

Q. Around the middle of November?

A. Yes, sir.

Q. All right. And is it fair to say that at least James Tucker takes part, he's one of your assistants, chief of the criminal division, right?

A. Yes, sir.

Q. He and yourself represent the government at these meetings, at this meeting, correct?

A. Yes, sir. I can't recall who all from the staff was in on it at that point, but James was involved some, yes, sir.

Q. Okay. I take it that at least through his attorney, Bill Porter, representations are made that Drew can be of help to the federal government?

A. Yes, sir.

Q. What kind of help? Help with the people already under indictment or beyond that?

A. As I recall it was to be beyond that, going back further even to the source of where these narcotics were coming from, who was setting up the loads and that sort of thing.

Q. How about Watkins? How about with respect to the pilot?

A. I believe as to him also. I believe as to everyone else, the memorandum calls for complete cooperation.

Q. Okay. And I take it there was then a rather standard kind of Memorandum of Understanding, he cooperates, he doesn't get any jail time and he gets a fine, but he does have a felony conviction?

A. If he had lived up to it, yes, sir.

Q. The understanding was, he cooperates and no jail time?

A. Right.

Q. Okay. Not an uncommon agreement, right?

A. Correct.

Q. May be those who disagree that there should be that bartering going on, but those who are familiar with the system know that that is one way that it really operates, am I correct?

A. Probably the primary way, yes, sir.

Q. In fact it operated on another, with another defendant in this case, namely Charlie Malone?

A. Yes, sir.

Q. Charlie Malone had agreed to cooperate early on, and whereas the three were sentenced to -- the three who pled guilty who didn't cooperate were sentenced to jail, Charlie Malone got a probationary sentence, right?

A. Yes, sir.

Q. He ultimatley was named in a bill of information which you filed, judge was -- random selection of a judge and there was a recommendation that there be probation and that's what occurred?

A. Yes, I believe that's true.

Q. Okay. In any event, the Memorandum of Understanding is entered into with Drew Fairchild, and for all intents and purposes, that's where -- by the end of 1980, that's where it stands, correct? He's going to be debriefed and hopefully he'll live up to his end of the bargain, you'll live up to yours, right?

A. Yes, sir. At least at the time of this, in November, 1980.

Q. Okay. I take it, by the way, as far as you know, since there had never been any -- he was not arrested early on -- the Memorandum of Understanding is not something that received any publicity, correct?

A. That's correct.

Q. So there is no one from -- nobody else would know about what's going on except the persons who were privy to that agreement, right?

A. Yes, sir.

Q. And for sure, the newspapers didn't get ahold of it at that point; there is just no publicity about Drew Fairchild's involvement, right?

A. That's true.

Q. Now, I have been furnished a document which is dated some five months later, March of 1981, which reflects -- it's an FBI 302 report. I can show it to you, you most likely have seen it. Reflecting a debriefing of Drew Fairchild. If you need to see it I'll be happy to show it to you. Let me ask the question first. Apparently at that point he's being debriefed with little indication he's not cooperating, he seems to be cooperating?

A. I recall the 302 you're talking about.

Q. So the jury understands, an FBI 302 is simply the number of the form for a memorandum?

A. It's a report, that's all it is. Report of an investigation.

Q. We call it a 302, that's the number that's on top of it. Form number?

A. Yes, sir.

Q. You recall this, he apparently is cooperating?

A. Well, as I recall he was cooperating. As I recall that 302 deals with the airplane.

Q. I think so. I think you're right. We have it here if you want to see it. I can make it available to you. I think you're right.

A. I believe that one did. The other side of the cooperation was dealing with the drug investigation, and really looking back on it, he was like taking us on a wild goose case, giving us -- trying to give us the impression of cooperating without really doing much.

Q. That's around March, that's what a reading of that tells you, correct?

A. Yes, sir, that's about the time that I would recall we found out.

Q. And it's after that that you began, I take it, I won't say slow up, you get miffed at him, which you concededly did, sometime after that, you in effect telling him he's trying to snow you?

A. I believe that it was sometime prior to the end of March.

Q. Okay.

A. That that probably occurred.

Q. Okay. There is some indication -- he at least is being advised by you, he gets the message, you don't believe he's living up, he's living up to his agreement at the end of March, right?

A. Oh, yes, sir. I think he knew I was upset.

Q. Okay. He so testified.

A. Did he?

Q. In any event, going back in time, apparently the FBI didn't get to debrief him until that time, early March. In February, as far as you knew, as far as he knew, there were no problems going on, correct, February of 81?

A. Well, I believe, I can't tell you exactly what point in time, Mr. Fawer, I believe there was conversation going on back and forth between the agents and our staff all along that he was pulling our chain, he was --

Q. I understand.

A. -- leading us on a wild goose chase.

Q. That was between your staff agents and yourself, not being communicated to him?

A. I don't know. I can't tell you at what point the agents were communicating back and forth to him that they weren't satisfied with what he was doing.

Q. Okay. I guess my question to you is though in February of 81, as far as he knows, as far as you know, if he cooperates and simply -- by the way, let me withdraw that. Touch on something else. By that time he doesn't have to cooperate with regard to that testimony at that trial, that's history, they've already pled in January, right, or February, whichever it is?

A. They pled in December I think, but yes.

Q. Were sentenced already?

A. They were sentenced in February I believe.

Q. Right. So they were finished, Malone is done, his cooperation is meaningless with respect to testimony at their trials?

A. Yes, sir, except as to other possible defendants.

Q. I said just to those, those four out of the way?

A. Yes. I'm sorry.

Q. You still have Watkins and anything else you could get?

A. Right.

Q. But if he cooperates, he's going to end up just where Charlie Malone is, no jail time?

A. Yes, sir.

Q. A fine, but not of great magnitude compared to jail, it's a sweet deal from his point of view, correct?

A. Probably from his point of view, yes, sir.

Q. Okay. Everything -- all he has to do is live up to his agreement at that point, correct?

A. Yes, sir.

Q. Thereafter, apparently, it becomes clear into the spring of 1981 he's not living up to it, right?

A. Yes, sir.

Q. We have your letter letting him know this, in no uncertain terms, right?

A. Yes, sir.

Q. You indicated that you expressed some intent to prosecute him. That's what I heard you say. To whom was that expressed?

A. To his lawyer I'm sure.

Q. You think this might have been told to Bill Porter at that time?

A. Yes, sir.

Q. Okay. Porter as we all know is dead, he can't testify. But would this have been, you don't ever recall communicating, aside from the communication where you were miffed at him, you didn't communicate it directly to Drew?

A. No, sir, I don't believe so.

Q. Okay. And you didn't get around to actually prosecuting him when Bud calls, right, Bud Holmes? You hadn't gotten around to doing anything about the prosecution?

A. That's correct.

Q. When Bud calls?

A. Correct.

Q. The call is a call out of the blue, but nothing very unusual about it?

A. Correct.

Q. Bud Holmes, as many other DA's, 45 counties in the Southern District of Mississippi, any one of them called you, you're going to respond to that call, if it was a similar request, seems reasonable, you'll acquiesce in it?

A. Yes, sir.

Q. That's what happened in this case?

A. Yes, sir.

Q. When Bud calls you, obviously -- do you need to, he's not been involved in this case in any way up to that point as far as you know?

A. That's correct.

Q. There is one thing unusual about the case, is that the name Fairchild is a name that's known to you, correct?

A. Yes, sir, it is.

Q. You knew it was the son of Wiley Fairchild. Is it fair to say -- had you any awareness of Drew Fairchild before he got in trouble in this matter?

A. I have probably heard the name or something, but -- had never laid eyes on him to my knowledge.

Q. What was unusual for your perspective, I say unusual, made this slightly different than the normal case, is Drew Fairchild was the son of Wiley Fairchild, who was a well known wealthy businessman in the Hattiesburg area?

A. Right. Yes, sir. With me being from Hattiesburg, of course I knew who Wiley Fairchild was.

Q. That name would have more immediate interest than would the name Smith or Jones or anybody who didn't have that kind of a high profile?

A. Well, just in that, yes, sir in that you would raise your eyebrows a little bit knowing who he was, but no difference in how we would handle it.

Q. Is it fair to say that when an individual with -- where there is some name recognition, local attorneys, the local prosecuting officials are more sensitive to seeing that the case is followed through and somebody takes care of it, or they themselves handle the case so as to avoid criticism that nothing happens to a wealthy or well known individual's son?

A. Yes, sir, that's part of politics I guess you'd say.

Q. But local district attorney is by anybody's definition part of that politics, he's an elected official?

A. Yes.

Q. You have a call from the elected official in Forest County concerning whatever happened to the case, correct?

A. Yes, sir.

Q. And there is, you then tell many about the status of the case?

A. Yes, sir.

Q. He asks you about it, I assume?

A. Yes, sir.

Q. Just instead of me, why don't you tell the jury, what is it that's said? What does he say, what do you say? I know it happened a long time ago, you really didn't give it much thought at the time.

A. Just I recall it was just a very general conversation where he asked about the status of the case at that time, and where we were with it, that sort of thing. And then did we mind, did we care, was it all right, words to that effect, if they took it.

Q. When they said it, did that refer to everything that was left in the case, or just Drew Fairchild, as far as you understood it?

A. Everything that was left in the case.

Q. Okay. Was there some understanding that there was more to the case, the pilot as well as Drew Fairchild who was left?

A. At least those two, yes, sir.

Q. And by the way, you knew Bill Porter, right? He was again a Hattiesburg attorney?

A. Yes, sir.

Q. Did you know that he and Bud Holmes were close, were friendly?

A. I knew that they knew each other. I don't know of any particular closeness at that point I don't believe.

Q. Jumping ahead of course, everybody knows the two, the plane crash in which Bill was killed, Bud was on that same plane, right?

A. Yes, sir.

Q. Coming back to the summer, this I take it is the summer of 81? When is it, sometime in July of 81 that this phone conversation is occurring?

A. I would only be guessing; I think it probably occurred earlier than that.

Q. Okay.

A. Late spring, early summer, somewhere along there of 81.

Q. And was the -- did you make -- what had to be done to transfer the case? There is nothing official, but physically, information had to get down, the file has to get down to Hattiesburg?

A. Well, no not really. The file consists of things that come from the agents, so the agents have all that. It's just matter of them working then with the state prosecutor's office as opposed to the federal prosecutor's office.

Q. Do you have to make any phone calls to the agents to say, look, we're sending this down to Hattiesburg, the rest of the case will be handled by Bud? Did you have to do anything in that sense?

A. No, sir, I don't believe I did.

Q. Just a case of Bud or whoever, the assistant DA, getting ahold of them, telling them that there is no reason why they wouldn't take it and then work with them?

A. Yes, sir, after the case is made, then it's up to the prosecutors.

Q. Okay. Was any mention, Bill Porter had been -- you obviously knew Bill Porter had represented Drew Fairchild at the time of the Memorandum of Understanding?

A. Yes, sir.

Q. You indicated you may have even had a word or two to speak to him about it, the lack of cooperation in 1981, that perhaps you had this conversation with Bill?

A. I believe that that was communicated by the staff, not by me especially, but by the staff.

Q. The staff being Jim Tucker, James Tucker or someone like that?

A. Pshon Barrett, Jerry Davis, one of the other assistants.

Q. Think about this, in the conversation with you, when you and he talked, this is your judge and he's Bud -- I mean you know him as Bud and he knows you as George. Right?

A. Right.

Q. It's not Mr. Phillips and Mr. Holmes, right?

A. Right.

Q. Was there any mention by him that he understood that Bill Porter hadn't been paid a fee by Drew Fairchild?

A. That's been discussed since then and he may have said something about the fact that Porter hadn't been paid or it may have been said by someone later on. I couldn't tell you for sure but that's possible.

Q. I can understand sometimes why you telescope these things but, thinking back to this conversation, is there some recollection that Bud had mentioned his awareness that Porter's fee was still outstanding?

A. It's possible.

Q. Okay.

A. It's hard to tell, like you said, it's been so long and it was a general conversation that did not seem very important at the time.

Q. Thank you.

A. And of course there's been so much conversation since all of this came about.

Q. What you're saying to me, if I understand you correctly, Mr. Phillips, he may have mentioned it, there was no mention that, about the fee not being paid but there was no discussion of it?

A. I don't recall any, no, sir.

Q. You don't recall any in-depth discussion?

A. Correct.

Q. All right. For all practical purposes, that, your discussion with Bud, ended the federal involvement with the case?

A. Yes, sir.

Q. It was now state was going to run with it and I take it you would have passed on to your people and your staff that that was what was happening?

A. Yes, sir.

Q. There was no particular dissension, it was just routine business, happens everyday of the week?

A. Doesn't happen everyday of the week but it happens fairly routinely.

Q. Fairly routinely?

A. Yes.

Q. Did you thereafter, we all know that there was an indictment on the state level in August of -- August 26, Drew Fairchild and Bob Watkins, Robert Watkins were indicted in state court. Did you, first of all, were you aware of it when it happened?

A. Only if I had read something in the press. I'm sure that I picked up something about it through the media after he was indicted down here, yes.

Q. Which is nothing more happening than you had expected to happen?

A. Yes, sir.

Q. Did you then follow it and talk to Bud Holmes about it, keep up with it, do anything? Is there anything you knew about the case thereafter, from, let's say, the indictment in the state which was August 26 of 81 through the end of Bud's term in office which was December 31, 83?

A. No, sir.

Q. Not one word, right?

A. I don't recall any involvement at all after the state took the case.

Q. Okay. I take it of course you say you may have read something about Drew's indictment and I take it that would have been the first publicity tying Drew to that drug bust that you know of?

A. That I recall, yes, sir.

Q. Okay. In late 82, let me just ask you something, when you were an attorney in Hattiesburg, prior to your being -- excuse me, the U. S. Attorney being appointed, as the U. S. Attorney, you knew Judge Nixon?

A. Yes, sir.

Q. You had appeared before him?

A. Yes, sir.

Q. A level of, you tell me, was there a level of friendship between you or just professional relationship I don't --

A. Pure professional relationship like most other lawyers in the district.

Q. You admire Judge Nixon?

A. Yes, sir.

Q. Respected him?

A. Yes, sir.

Q. In 1982, in the fall of that year he was elevated to be chief judge. Correct?

A. Yes, sir. As I said, I don't recall the date but I would take your word for it it was about that time, yes, sir.

Q. September of 1982?

A. Yes, sir.

Q. And in fact I think there was a party that was held here in Hattiesburg, you, among a lot of attorneys, friends, well-wishers were in attendance. Correct?

A. I believe that's correct.

Q. Judges have friends who are usually, many of the judges -- You know a lot of judges, both state and federal judges, do you not?

A. Yes, sir.

Q. Is it fair to say judges are usually, for the most part, former lawyers. Right?

A. Yes, sir.

Q. And therefore their friends are for the most part, lawyers. Right?

A. A lot of them certainly are, yes, sir.

Q. Might make them have a lot of dull friends but that's basically it?

A. Yes, sir.

Q. In any event you were at that function, it was one of many functions you would have attended of a light nature. Is that right?

A. I don't even recall, I didn't recall until you just said it, but --

Q. It doesn't refresh your recollection?

A. No, sir, I don't recall where it was but it seems there was a reception for Judge Nixon once he was appointed chief judge, yes, sir.

Q. Okay. Let's now turn, since nothing else happens in 80, nothing happened, the turning over of the case to the state was in mid 81, the indictment came down, you know nothing about it, 82, 83, 84, you do get a visit from someone in your office on or about April 6 or 7 of that year. Correct?

A. I don't recall the date, but yes, sir.

Q. Well, you know someone by the name of John Balta?

A. Yes, sir.

Q. Tell the jury who John Balta works with or for.

A. To my knowledge he works for Wiley Fairchild.

Q. Okay. A friend of yours, Balta, I mean?

A. An acquaintance.

Q. You have known him for some years?

A. Yes, sir.

Q. Okay. And I take it that -- He's a very identifiable person he has no hair, bald pate, sort --

A. True.

Q. In any event he comes to you and advises you or brings to you a complaint from Wiley Fairchild. Right?

A. No, sir, he called me.

Q. I beg your pardon. Did he come to see you or just the whole conversation is on the phone?

A. Whole conversation is on the phone.

Q. Beg your pardon, he calls you at your office and he basically tells you, does he not, that Wiley Fairchild, the man he works for, feels that he is being blackmailed, that's his words, by Bud Holmes and Carroll Ingram. Am I correct?

A. He said, I don't remember if he used the word blackmail. I was going to use he used the word that he was being held up by Bud Holmes and perhaps said Carroll Ingram. I'm not sure.

Q. Do you recall reading any FBI 302's in which, when they discuss what Balta complained about on Wiley's behalf, it was the word blackmail and perhaps even the word extortion?

A. No, sir, I don't recall reading any 302's.

MR. FAWER: Okay. Would you indulge me one moment, Your Honor?

THE COURT: All right.

BY MR. FAWER:

Q. We needn't wait, we can just go on.

A. Okay.

Q. In any event he did make this statement to you. Correct?

A. Yes, sir.

Q. With that information, whom did you pass that on to or what did you take?

A. I picked up the phone and called the FBI and did a standard referral.

Q. When you say you called the FBI, you called Mr. Kennedy the head of the FBI or whom would you have called?

A. I believe that I called Kennedy, yes, sir.

Q. Now, by the way, in no way, am I correct, Judge Nixon's name wasn't mentioned by Baltar in any way in this complaint. Is that correct?

A. That's correct.

Q. He was complaining in some way on behalf of Wiley, about Holmes and Ingram. Right?

A. I think that's right.

Q. Holmes was out of office when this conversation is taking place?

A. I don't recall when Bud Holmes went out of office.

Q. I don't think there would be any problem with a stipulation, Bud Holmes leaves office December 31 of 83. Okay?

A. Okay.

Q. This is being said to you, do you question Mr. Baltar or do you simply take the information, pass it on the to the FBI?

A. I simply took the information.

Q. Did you indicate that somebody would be getting back to him or what?

A. No, sir, I just, as best I recall, I just told him that I would relate it on to the bureau.

Q. And you did do that?

A. Yes, sir.

Q. Did you then play any role in the follow up of that?

A. No, sir.

Q. Okay. Did you have any knowledge -- There's a man named Skip Jarvis. First of all, does that name mean anything to you?

A. No, sir.

Q. You say it doesn't have any meaning to you in the sense you don't know him or you never heard the name in your life?

A. I've only heard the name in I think media accounts since all of this came up. I never met the man to my knowledge, wouldn't know him if he walked in the room.

Q. Okay. I take it --

MR. FAWER: Just bear with me one moment. Your Honor, may I be indulged just one second.

BY MR. FAWER:

Q. Let me show you, you indicated that you passed this information, standard referral over to the FBI to Mr. Kennedy, who is one of the agents in the office?

A. Yes, sir.

Q. I show you what is a 302, I've marked it Defendant's Exhibit 9 and so we understand one another, it's a 302 of an interview conducted by the FBI on April ten, a few days later, of Wiley Fairchild himself. Okay?

A. Okay.

Q. I just want you to take a look at the top two paragraphs and see if that refreshes your recollection as to what Baltar apparently told you was that Wiley was being both extorted and blackmailed.

A. Yes, sir. It was language to that effect and he very easily could have used the term blackmail or whatnot. I've never seen this 302 before.

Q. I understand that. But is it fair to say, Mr. Phillips, in that 302 prepared by the FBI agents, they're introducing themselves to Wiley by reporting what Baltar has said to you?

A. Yes, sir, I think that's what it said.

Q. And basically they are reporting and -- Let me ask you another question: It seems that that is accurate in the sense that what Baltar -- you didn't make any notes -- but that Baltar was complaining of blackmail and extortion. Correct?

A. Yes, sir.

Q. Thank you. Now as I understand it, from that point on, you have absolutely no involvement with the investigation which culminates in the Wiley Fairchild indictment, the Bud Holmes indictment, this indictment, you're just not in it basically because it's department policy that the local U. S. Attorney not be involved in that kind of an investigation. Correct?

A. Correct.

Q. And you therefore in effect sat on the sidelines, sat on the sideline in the sense that you weren't even a spectator because you weren't even kept abreast of the investigation. Right?

A. Yes.

Q. Knowing perhaps that you could be a witness as you are right now?

A. I assume so, yes, sir.

Q. By the way, you indicated, you know, that you had known Judge Nixon had been a sitting judge in court for years before you became U. S. Attorney and he continued to sit and became chief judge. Correct?

A. Yes, sir.

Q. You in fact were aware -- What is the court above the district court? I mean we have --

A. Court of appeals.

Q. We have many, many district judges, do we not, hroughout the country?

A. Yes.

Q. There's one level between that court and the Supreme Court of the United States? Right?

A. Yes, sir.

Q. It's called the Fifth Circuit. Right?

A. Fifth Circuit Court of Appeals.

Q. And it sits permanently based in New Orleans?

A. Right.

Q. Covers Mississippi, Louisiana, --

A. And Texas, yes, sir.

MR. WEINGARTEN: May we approach the bench? (AT SIDE BAR:)

MR. WEINGARTEN: I anticipate what Mr. Fawer is going to elicit from this witness, that Judge Nixon was considered for the Fifth Circuit. It's hearsay from this witness and I --

MR. FAWER: No, sir. I'm going to bring out he recommended him. It's beyond hearsay.

THE COURT: In terms or what?

MR. FAWER: The character of Mr. Nixon. This witness who's on, I can use this witness, as to what his opinion is of his character, that he believes him to be an honest man, he recommended him for an appointment to the Fifth Circuit, but Judge Nixon chose not to leave the trial bench. He's aware of that.

THE COURT: What's your objection?

MR. WEINGARTEN: It's well beyond the scope of the direct.

MR. FAWER: We can call him back, but I don't see the purpose to be served by --

THE COURT: You can call him back as your witness.

(IN OPEN COURT:)

MR. FAWER: I'll call him back, I will call him back as my own witness, if I choose.

THE COURT: All right.

THE WITNESS: Fine.

BY MR. FAWER:

Q. Were you aware there was an interview, a lengthy interview of Judge Nixon in his office in Biloxi by an FBI agent and a member of the prosecuting staff on April 18 of 1984? Were you aware of it, that it was going to take place?

A. I don't recall any specific time or date or anything like that. I was certain that they were going to interview Judge

Nixon, yes.

Q. You say you were certain that they were going to interview Judge Nixon. Why would you have been -- I thought you had no awareness of the investigation. If all that had come out, if all you knew was a Baltar allegation of Holmes and Ingram blackmailing and extorting Wiley, --

A. I just was aware that the investigation existed at that point and one of the natural things they would do would be to interview very early on, I would think, Judge Nixon.

Q. Fine. And so then on the evening -- I take it shortly after that interview you of course did not alert Judge Nixon he was going to be interviewed?

A. I did not.

Q. That was not something you were asked to do on nor would you feel it would have been proper to do. Is that correct?

A. That's correct.

Q. That afternoon, evening, the next day, you get a call from Judge Nixon. Is that correct?

A. That's correct.

Q. Let me say, you have known Judge Nixon for a number of years and you can tell when he was angry, upset, perturbed, you're able to hear it in his voice. Correct?

A. Yes, sir.

Q. He does not hide that emotion, does he?

A. No, sir.

Q. He's very blunt about it. Correct?

A. Yes, sir.

Q. And he was some angry when he spoke to you. Right?

A. Yes, sir.

Q. He was furious that somebody was suggesting that he had corrupted his office. Right? That's what they were really suggesting in the questioning of him?

A. He was upset and angry at the whole thing.

Q. Okay.

A. And he was troubled about, you know, how or why somebody might be saying these sort of things.

Q. Okay. And he was asking you, or excuse me, trying to figure out what it was he was supposed to have done in the Drew Fairchild case because that's what they were questioning him about in that interview. Correct?

A. I don't recall him saying exactly what they were questioning him about. It was like that they were questioning something he had done or his involvement with the oil transactions or whatever.

Q. Okay.

A. And he was upset at that questioning.

Q. Is it fair to say he had never mentioned to you earlier about these oil transactions, you had no reason to discuss those with him. Is that correct?

A. That's correct.

Q. But he didn't have any hesitation in mentioning it in explaining why he was upset about this interview. Correct?

A. No, there was no hesitation that I recall.

Q. Okay. And, to put it bluntly, he was simply in sense had that somebody was making an allegation of wrongdoing on his part and he was trying to find out from you what it was all about. Correct?

A. Correct.

Q. Is it fair to say you did not view it in any way as an improper inquiry, did you?

A. No, sir, I almost expected to hear from him after the interview.

Q. When you picked up the phone call you could have said hello, Judge, practically because you knew, whether someone would make that type of allegation against this type of individual he was going to try to figure out what was going on, who is foolish enough, why are they doing this to me, correct?

A. Yes, sir. I was not surprised when he called me.

Q. You would have done the same thing?

A. Probably.

Q. Were you aware of the fact that he also called Mr. Kennedy the head of the FBI who set up the interview to try to find out what it was all about?

A. No, sir. I don't think I was aware of that.

Q. Were you aware of anybody else that he called in his frustration at this entire inquiry?

A. No, sir.

Q. Have you ever read the transcript of that interview?

A. No, sir, I have not.

Q. I take it you have not been asked or have not read any of the Grand Jury testimony associated with this case?

A. No, sir.

Q. Aside from your own?

A. My own, yes, sir.

Q. Let me ask you something, Mr. Phillips, is it fair to say, or you tell me, that even you were possibly suspect at one point in this investigation?

A. I think at the inception everything concerning the entire case was looked at, and there was a thorough investigation of our office's handling of the matter at the time.

Q. You were satisfied, the fact that you knew that you had not done anything wrong did not make you any -- maybe you were satisfied of your own innocence and your office's innocence, but it still caused you some great concern. Is that a fair statement?

A. Certainly, yes.

Q. Is it fair to say you never felt in your handling of this case you had never done anything wrong?

A. Well, I knew we hadn't done anything wrong.

Q. That's what I'm saying. And, as far as you knew, none of your staff had done anything wrong. Correct?

A. Yes, sir.

Q. That did not stop the suspicion initially that surrounded your office?

A. Well, it was an investigation.

Q. I understand.

A. Of course I've been in on a lot of those and I know you look at everything surrounding a certain set of circumstances.

Q. I take it being a prosecutor now who has six years' experience under your belt. Right?

A. A little over ten years, if you count the state time, yes.

Q. I think that's fair, four years on the state level, six years on the federal level?

A. Five basically.

Q. You know as well as I do one way you make cases is by making deals. Right?

A. Yes, sir.

Q. You trade up. Right? Do you know what that phrase means?

MR. WEINGARTEN: Your Honor, I would like to approach the bench. (AT SIDE BAR:)

MR. WEINGARTEN: I think Mr. Fawer is going to get into the propriety of plea bargaining generally and perhaps specifically in this case. I suggest it's absolutely irrelevant.

MR. FAWER: I'm not --

MR. WEINGARTEN: Trading up, that's exactly --

MR. FAWER: I'm not saying there's anything wrong with it, it's a fact of life.

MR. WEINGARTEN: Why is it relevant in this case?

MR. FAWER: I have a right to cross-examine this man. If I say something objectionable. You can make an objection.

MR. WEINGARTEN: I am objecting. I'm objecting to the entire line of --

MR. FAWER: On what grounds? Then make a proffer.

MR. WEINGARTEN: May I make a proffer?

MR. FAWER: I'm saying one way you make a case is by targeting somebody and then trading up other people in exchange for testimony. This is an experienced prosecutor and I want to establish it as a way of developing criminal cases.

MR. WEINGARTEN: There's nothing wrong with that, that's an entirely different matter. But whether or not -- that has nothing whatever to do with the crimes charged in this case.

MR. FAWER: It has to do with the way I think you acted in this case. I want you to understand, I'm not apologizing, but I don't have a right to attack you through this witness but I have the right to lay a factual background, the fact that you put a hook into someone and turn him before you like him to fry, that's your way of doing it and he can't testify to that.

MR. WEINGARTEN: He can cross-examine a witness who has a hook into him but questioning a witness about the propriety of the government's --

MR. FAWER: I'm not questioning him about the propriety.

MR. WEINGARTEN: -- propriety of the government's operation is absolutely not admissible. If you have some fault with the way the government conducted itself, that's a question for the judge, it shouldn't be before the jury.

MR. FAWER: Excuse me. I'm not questioning that. I'm saying this is simply what happened. He can say no, it isn't.

MR. WEINGARTEN: It's irrelevant.

MR. FAWER: Excuse me. Nobody's saying you haven't got a right to take Charlie Malone and Drew Fairchild, these are people who are involved in crimes, they cut a deal in exchange for getting someone else. What's wrong with my question? That is a way of proceeding. I'm not saying there's anything wrong.

MR. WEINGARTEN: It's irrelevant to ask this witness general procedures about other cases, in their handling by the Department of Justice solely to point out the government in this case did something wrong and that's what will --

MR. FAWER: The argument, I think, is perfectly proper because you got somebody who committed perjury, according to you, three times and only when you got out of him what you wanted is he telling the truth. That's your thesis. He is the the prosecuting attorney, the highest prosecuting attorney I can get to testify. He's on there, he's testifying what his office does in terms of making deals. All I want to establish is that's the way of going forward with the prosecution. I'm not going to ask him to comment in any way on the propriety of the way this case was made.

MR. WEINGARTEN: That's irrelevant.

MR. FAWER: I said I was not going to question him.

MR. WEINGARTEN: Him testifying about the procedures in making a case is irrelevant in this case.

MR. FAWER: I can put you on.

MR. WEINGARTEN: You can try to do that.

MR. FAWER: Who am I supposed to call?

THE COURT: Cut it down a little bit.

MR. FAWER: Fine, I will do that, because I'm virtually done with him. I have like five minutes to go.

MR. WEINGARTEN: Could I just be heard? So that I don't make redundant objections I just would like to make it clear, our position is it's improper for facts to be elicited before the jury concerning the propriety of the government's investigation. That's exactly what Mr. Fawer is doing in this line of questioning, it's irrelevant, it has nothing whatever to do with Judge Nixon received a gratuity or lied in the Grand

Jury room.

MR. FAWER: You missed the point. It's not what you do, it's the message you give to the witnesses when you tell somebody in effect here's what we need you to testify to, look at the deal they made, you can make the same deal. Now I have the right to lay those facts before the jury and I will. I am not arguing your impropriety, they may assume it, that's your problem, but I have a right to show how Bud Holmes came to quote the truth, how Wiley quote, came to the truth.

MR. WEINGARTEN: You can do that when you cross-examine them, not through in witness.

MR. FAWER: I can do it through any witness.

MR. WEINGARTEN: It's improper.

MR. FAWER: Judge, I think you ruled on it. I will keep it within bounds.

THE COURT: You haven't got a right through him to establish what these other people say. That's hearsay.

MR. FAWER: I won't, I'm not going to go near that.

THE COURT: Okay. You move on. (IN OPEN COURT:)

MR. FAWER: Thank you, Judge.

BY MR. FAWER:

Q. Mr. Phillips, I started to ask you about in this case, you indicated that you had made some plea agreements with Charlie Malone and then with Drew Fairchild for the purpose of securing their testimony in an effort to get other people to be able to have them testify to get information against other people. Right?

A. Yes, sir.

Q. They are people who are sort of on a parallel or collateral level with them. Correct?

A. Yes, sir.

Q. When I use the phrase, I don't know if you understood it, I used the phrase trading up. Do you know what that phrase means?

A. In prosecution jargon?

Q. Yes.

A. Yes, sir.

Q. Tell the jury what trading up is.

A. When we have a defendant and reach a memorandum of understanding, as for instance Drew Fairchild's memorandum of understanding, you try to use that person, if you're going to turn them into a cooperating individual, you try to use that person to get other people of a higher level of culpability, and that is that their involvement in particular illegal activities was of a greater degree. For example, he was on the load low crew, then you would be trying to get someone, for instance, who arranged the load, who bought the load, who set up the load, that sort of thing.

Q. Is it fair to say that that is also true when a determination is made that there is somebody, put another way, times the government will make someone or deem somebody the target of their investigation. Correct?

A. Yes, sir.

Q. The target is usually the man they would most like to prosecute?

A. It's used.

Q. Excuse me, let me rephrase it. The man they would most like to prosecute or the person they deem, the government or the prosecutor deems most culpable?

A. Yes, sir.

Q. And then they will go out and make deals, plea bargains with everyone else, in an effort to be able to make a case against the target?

A. With everyone else, are you -- I don't know, unless you talk about a specific case.

Q. I'm talking in generalities, but let's put it this way: You had no doubt, did you not, soon after the Grand Jury got underway in this matter that the target, the ultimate target for the Department of Justice and Public Integrity Section is the man who's now on trial. Am I right?

A. I certainly had the impression after it got started that he was indeed a target.

Q. You knew soon after it got started there were certain plea bargains that got entered into, were there not?

A. Yes, sir.

Q. You could read it in the paper, the name you heard in this courtroom, Wiley Fairchild. Correct?

A. Yes.

Q. Bud Holmes?

A. Yes, sir.

Q. And were you aware of anything with respect -- Were you aware that Carroll Ingram at one point was under some cloud of suspicion or was a form of target involved?

A. No, sir, I didn't know, except by way of this stuff baking in the press who was or was not considered by them to be culpable.

Q. By the way, is it fair to say that when an individual testifies before a Grand Jury, be it voluntarily or involuntarily, by subpoena, that the Grand Jury and yourself, you as U. S. Attorney, have the right, the power, the authority, to ask that man to come back to the Grand Jury another time to testify again?

A. Yes, sir.

Q. And in your experience, if the Grand Jury, when a Grand Jury questions a human being or a citizen of the United States about a given matter, and learns then some additional specific facts thereafter, is it not common, normal practice, for you to call the man back and question him about the specific subject that you had not questioned him about?

MR. WEINGARTEN: May I approach the bench?

MR. FAWER: May I finish my question, first? Has the court ruled? Do I understand I have a right to finish my question before there's an objection?

MR. WEINGARTEN: I object to what's been said, I would like to approach the bench.

MR. FAWER: May I first finish --

THE COURT: Approach the bench.

(At the bench:)

THE COURT: Finish your question.

MR. FAWER: My question, sir, was whether it was, beginning of the question was whether it was normal practice when a man is question about a subject, and at that point in time a certain amount of information, certain specific item of inquiry is not known about and it is learned about thereafter, it is normal to call that man back about the newfound information.

MR. WEINGARTEN: Every question directed to this witness for the last thirty minutes has been directed to one issue, the propriety of the Government's conduct.

THE COURT: I'll sustain the objection to that question.

MR. FAWER: Thank you, Your Honor.

(Open court:)

BY MR. FAWER:

Q. One final question, Mr. Phillips. As I understand, I understand this is not a pleasant setting for a U. S. Attorney to find himself in as a witness. Let me ask you this: You have known Mr. Nixon, Judge Nixon now for seven years or I guess almost as long as he's been a judge, is that correct? A fair statement? If not all of seventeen years --

A. No, sir, not that long, but a long time, yes, sir.

Q. Okay. Have you ever known him to be anything but an honest man and a fair judge?

A. He's always been honest and straight with me, yes, sir.

Q. As far as you know, that's how you view him as you sit on this witness stand?

A. Yes, sir.

MR. FAWER: Thank you. No other questions. Indulge my one moment, Your Honor? I'm sorry. (Pause.)

BY MR. FAWER:

Q. One other question. I think I may have asked, but in the interest of clarity. Is it fair to say -- first of all, does a federal judge have anything to do with whether or not you transfer a case to a state prosecutor? Does a federal judge have anything to do with that?

A. No, sir.

Q. Did at any time Judge Nixon have anything to do with the Drew Fairchild case? Did he ever speak to you, did he ever say one word to you concerning Drew Fairchild, Wiley Fairchild, anyone else, from 1980 when this drug bust occurred until the time that he called you in anger after the interview with the FBI?

A. No, sir, he never mentioned it to me.

MR. FAWER: Thank you.

MR. WEINGARTEN: No questions.

THE COURT: Thank you. You may stand down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Ladies and gentlemen, I don't think we'll have time to really get started on another witness, so let's recess until nine o'clock in the morning.

(Recess.)

(End of Volume 2.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 29, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 3

DAVID A. SCOTT
COURT REPORTER
Post Office Box 2202
Jackson, Mississippi 39225-2202

JANET CLEMENS
COURT REPORTER
Post Office Box 517
Oxford, Mississippi 386

(January 29, 1986:)

THE COURT: Call your next witness.

MS. LITTLE: Robert Jarvis.

ROBERT L. JARVIS, JR.,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LITTLE:

Q. State your name, please?

A. Robert L. Jarvis, Jr.

Q. Mr. Jarvis, do you have a nickname?

A. Yes, my friends know me as Skip.

Q. Mr. Jarvis, where do you live?

A. Live Oak, Florida.

Q. Where do you work?

A. Assistant state attorney in Live Oak, Third Circuit in Florida.

Q. Speak up so everyone can hear you.

A. Would you like me to repeat that answer?

Q. Go ahead.

A. I'm an assistant state attorney for the third judicial circuit of Florida, operating out of Live Oak.

Q. How old are you?

A. I'm thirty-five.

Q. Do you have a family?

A. I do.

Q. Who makes up your family?

A. I have a wife Pamela and two daughters.

Q. How old are your children?

A. 15 and 9.

Q. What's your educational background?

A. I received my bachelors degree from Florida State University; I received my law degree from Mississippi College here in -- in Jackson, Mississippi.

Q. When were you in law school?

A. I was in law school from the fall of 1980 through December of 1983.

Q. Did you attend law school during the day or at night?

A. I attended law school at night.

Q. Were you employed during the day?

A. Yes, I was.

Q. Where were you employed?

A. I was employed at W. R. Fairchild Construction Company here in Hattiesburg.

Q. Just be clear, you were in law school in Jackson?

A. Yes, sir.

Q. And working in Hattiesburg?

A. Right. I worked here in Hattiesburg in the daytime, commuted to Jackson to school at night.

Q. Where were you living during that time?

A. I was living here in Hattiesburg.

Q. During what period of time did you work for Wiley Fairchild Construction Company?

A. I worked for them from August 20th, 1979 until May 8th, 1983.

Q. Are you related to Mr. Fairchild in any way?

A. My wife is his grandniece, so we're related by marriage.

Q. What kind of business was Fairchild Construction while you worked there?

A. The actual construction company itself was in the pile driving and road construction business, and they also had a sideline, the oil business.

Q. What was the nature of the oil business?

A. It was the acquiring of properties and the exploration and sale of crude oil and natural gas.

Q. What was the main concentration of the company, construction work or oil?

A. The main concentration was the construction work. The oil division was more or less a sideline coming out of the original company.

Q. What was your position with the company?

A. My official title was administrative assistant.

Q. What does that mean?

A. Well, basically I was administrative assistant to Wiley Fairchild in that I handled his personal banking, real estate, and other business things, and also in addition to that I was in charge of the office operations for the oil division for the construction company.

Q. How many employees worked in the oil division?

A. It really broke down into two sets of employees. We had our field crews that were approximately four to five on a normal basis, and then in the office operations were three of us.

Q. Who else besides you?

A. A lady named Lynn Smith at that time, who has since then married, she is now Lynn Jones. And then there has been another position that has changed through the years. Originally when I went to work there it was a lady named Cathy Bynum. She left and Cathy Burnett came to work. She has left and Mike Moore is now employed in that position.

Q. Specifically what were your duties in the oil division?

A. To oversee the operations end of it, to keep track of the lease records, to negotiate drilling contracts and if successful to market the products.

Q. Did you have primary responsibility or did you work under someone?

A. I worked under Wiley Fairchild directly, but I had the primary responsibility to oversee the office operations there.

Q. Specifically what sort of oil transaction would you oversee?

A. That would include many things. The purchase of actual mineral interests in property, the leasing of mineral interests in property, then once we acquired those interests I would be involved in the contracting with the different companies to drill these properties, and once again, if the drilling was successful, then I would be successful in marketing the products for the individual wells.

Q. For the benefit of the jury, could you define what is a mineral interest?

A. Okay. Basically each surface acre of land has what's considered a mineral acre, which would be the minerals underneath that surface acre. It more or less is a theory that if you own the surface of the land, you own all the minerals to the center of the earth.

Q. Are there different kinds of mineral interests?

A. I really don't understand that question.

Q. Can you define what a working interest is?

A. Oh, okay. A working interest could be either a mineral interest or a leasehold interest in minerals whereby if you participated in the drilling contract, you would pay your proportionate share of the costs for drilling that well and maintenance and continued production on that well.

Q. Do you receive profits from the well?

A. Yes, you would receive those profits from the well and out of those profits, hopefully the profits would be sufficient to pay your cost. But a working interest is the one who actually pays the costs, versus a royalty interest, which is just revenue.

Q. Explain what a royalty interest is.

A. Royalty interest is an interest which comes out of mineral interest. The working interest pays the complete cost out of their share of production; the royalty interest receives strictly income. There is no assessment of costs against the royalty interests.

Q. Each of these type of interests can be purchased, is that right?

A. Yes, sir, regular type commodities that are bought and traded on a regular basis in the oil business.

Q. Did the Fairchild Company buy and sell working interests and royalty interest while you worked there?

A. Yes, we did.

Q. Who in the company had responsibility for preparing the papers relating to such transactions?

A. The actual buying of the interests out on the ground from the land owners were prepared by the field crews. Any conveyances out of those going to other parties would be prepared by the office staff here in Hattiesburg.

Q. Who in particular would be in charge of preparing those papers?

A. I would oversee the preparation of any of those papers.

Q. Did you just oversee them or would you also prepare them yourself?

A. With only three of us there, normally I would be directly involved. Or if I had someone else do it they would be doing it under my direction.

Q. Who in the office had the responsibility for maintaining records of such transactions?

A. The ultimate responsibility rested on me.

Q. Directing your attention to February of 1981, did you have occasion to prepare some royalty deeds for Wiley Fairchild?

A. Yes, I did.

Q. How did you come to do that?

A. I was in my office on February 25, 1981 and received a telephone call on the intercom from Mr. Fairchild to go to his office. I went to his office. He instructed me to draw up some conveyances.

Q. Were you given any particular instructions?

A. Yes, I was. I was given --

MR. FAWER: May we just approach the bench for one moment?

THE COURT: Yes.

(At the bench:)

MR. FAWER: Judge, I just want to understand, in the interest of expediting it, I'm not going to object to some of the hearsay that they're going to elicit, which is obviously what she's doing right now, because he's testifying to what

Wiley Fairchild stated to him. But I just want it understood, I'm not waiving my right to make objections to the hearsay, to other crimes that might have occured. He's being asked what a third party said to him, which is classical hearsay. It is not, you can say it's not being offered for the truth of it, but that's all it is.

MS. LITTLE: Wiley Fairchild gave instructions to Mr. Jarvis to prepare these deeds. That's not hearsay. It's a command.

MR. FAWER: It's a command? It's not offered for the truth; there is no truth to it.

THE COURT: You're not going to object to it?

MR. FAWER: I just want Your Honor, I'm allowing that to happen, I expect there will be times when it becomes more crucial in terms of the inadmissibility, I will make an objection. I don't want it held against me that I'm waiving it.

THE COURT: Well, you're not waiving anything. Let's go on.

MR. FAWER: Thank you.

(Open court:)

BY MS. LITTLE:

Q. Mr. Jarvis, did Mr. Fairchild give you any instructions?

A. Yes, he did.

Q. What were the instructions?

A. My instructions were to draw up three blank overriding royalty conveyances and he said in the Covington County well, the Getty Marion County well and the well down in Mobile County.

Q. Mr. Jarvis, I'm going to show you what has been marked as Government's Exhibit 8, 9 and 10 and ask you to look at them.

(Delivers documents to witness.)

A. May I take them out of these covers?

Q. Sure. Let me ask you this question first. After you received these instructions what did you do?

A. Well, initially I had to ask for a clarification because I didn't understand what he was asking me to do.

Q. Did you ask for a clarification?

A. I did. The clarification I needed was he requested I draw up three blank conveyances. The conveyances themselves were always three fill in the blank forms and I didn't know if he wanted me to bring in three fill in the blank forms or whatever.

Q. Did he clarify that for you?

A. Yes. He didn't use the term grantee but he told me to leave blank to the person where it was going to and so I left the grantee blank when I gave them to him.

Q. What did you do after you did that?

A. I drew up the conveyances.

Q. Look at the documents and tell me if you know what they are.

A. Exhibit 8, I recognize; Exhibit 9, I recognize; Exhibit 10, I recognize.

Q. Let's start with Exhibit 8. What is it?

A. Exhibit 8 is an assignment of overriding royalty on oil and gas.

Q. Where?

A. This covers a well in Mobile County, Alabama.

Q. Is that your signature on that deed?

A. May I take it completely out of this cover?

Q. Sure.

A. Yes, my signature is on here.

Q. Is that a deed that you prepared at Mr. Fairchild's instructions?

A. This particular one was prepared by Sherry Burnett at my instruction. I gave her the instruction, had her prepare it, I reviewed it and I took it out for execution. It was prepared at my direction.

Q. What about Exhibit No. 9? What is that?

A. Exhibit 9 is an overriding royalty deed conveying an interest in Marion County, Mississippi.

Q. Is your signature on that?

A. Yes, it is. I signed it as witness.

Q. Did you prepare it?

A. I prepared this particular instrument myself.

Q. Okay. How about Exhibit No. 10, what is that?

A. Exhibit 10 is an overriding royalty deed conveying an interest in Covington County, Mississippi.

Q. Is your signature on it?

A. Yes, it is. I signed this as witness as well.

Q. Did you prepare it?

A. I prepared this particular instrument myself.

Q. And what are the dates on all three of these deeds?

A. February 25, 1981.

Q. And is that the date you prepared the deeds?

A. That is the date that I physically prepared these deeds.

MS. LITTLE: We move the introduction of Government's Exhibit 8, 9 and 10.

MR. TAUER: No objection.

THE COURT: They may be received.

(Exhibit No. G-8 marked).

(Exhibit No. G-9 marked).

(Exhibit No. G-10 marked).

BY MS. LITTLE:

Q. Mr. Jarvis, what did you do after you prepared these deeds?

A. I took these instruments upstairs to Mr. Fairchild's office and allowed him to execute them and I signed --

Q. What does that mean to execute them?

A. To sign as grantor, the person making the conveyance signing at the bottom, and then I signed it as a witness. I took it to Sherry Burnett, who is an employee of the oil division at that time, she signed as the other witness. Then I took them to Lynn Jones now, who was Lynn Smith at the time, and had her notarize them.

Q. After you got these signatures, what did you do with the deeds?

A. After the instruments were completed, witnessed and notarized, I took them upstairs to deliver them to Mr. Fairchild. However, Mr. Fairchild had left the building and I took these instruments and sealed them in a manila envelope because they were like at this point a blank check and I didn't want to leave them laying around. I put them in a sealed envelope and put then in big letters on the outside, overriding royalty deeds so he would know what was in the envelope and left them on Mr. Fairchild's desk.

Q. I'm going to show you now what has been marked as Government's Exhibit 11 for identification, ask you if you recognize it?

A. Yes. This is the manila envelope that it's sealed in, it has my writing on the front of it, where it says overriding royalty.

Q. Is that the envelope in which you put the deeds?

A. Yes it is.

MS. LITTLE: Move Government's Exhibit 11.

MR. FAWER: No objection.

THE COURT: Let it be received.

BY MS. LITTLE:

Q. What did you put the envelope?

A. I put it on Mr. Fairchild's desk, I wrote on here overriding royalty deeds so he would know that was what was contained in the envelope on his desk.

Q. Did you ever have occasion to see that envelope again?

A. Yes, ma'am, I did.

Q. When?

A. Approximately a week later.

Q. How did that come about?

A. In Mr. Fairchild's office there was a tray that he would place things in that he wanted me to handle, it was on a credenza behind his desk, I went in his office because I routinely checked this during the day because I checked the things during the the day he wanted me to handle and this envelope was in my tray.

Q. What was inside the envelope?

A. The original conveyances I prepared on the 25.

Q. Was the envelope in the same condition as it had been when you left it for Mr. Fairchild?

A. Not exactly. There was some additional writing when I left it on his desk.

Q. Where was the additional writing?

A. It was on the back side of the envelope.

Q. Hold the envelope up and indicate where the writing was?

A. I put my stuff on this side and the other was written on the back of the envelope.

Q. Looking at the writing in the top left-hand corner in blue ink, do you know whose handwriting that is?

A. Yes. This is Wiley Fairchild's writing. I dealt with him on a regular basis and I recognize the handwriting.

Q. What does it say?

A. Three Marion, three Covington, three Mobile -- the spelling is incorrect but I knew what he was putting on here.

Q. This is some writing in red ink is there not?

A. Yes, there is.

Q. Do you know of your own personal knowledge whose writing that is?

A. Of my own personal knowledge I do not know. I just assume from the signature on it the name.

Q. What name is on it?

A. It starts out with Wiley Fairchild's name and ends with the name Carroll Ingram.

Q. What does it say?

A. Wiley Fairchild, personal and then confidential is abbreviated, C-O-N-F, and then it has the name Carroll Ingram after that.

Q. What did you do with the envelope after you saw the envelope in Wiley Fairchild's office?

A. I didn't know what to do with it so I took it downstairs to my office and waited for Mr. Fairchild to come into the office to get a clarification as to what I was needed to do.

Q. Did you see him later in the day?

A. Yes, ma'am, I did.

Q. Did you get clarification?

A. Yes, ma'am, I did.

Q. What was the clarification?

A. The clarification initially was to change the amount of the acreage, changing from the original conveyance being one acre of royalty for each instrument to three acres on the Mobile County one, three acres on the Marion County one and three acres on the Covington County well.

Q. Did you make any notations of those suggested changes?

A. Yes, because I was going do retype these instruments, I just went ahead and used them for my notes, I went ahead and made the correction in my handwriting on the face of the instrument.

Q. So the exhibits you're holding, Government's Exhibit 8, 9 and 10 reflect your changes in the instrument?

A. Yes. On each one you will see where I had the original number one where I scratched through and the felt tip pen where I wrote three three or five respectively on each one of them.

Q. Did Mr. Fairchild give you any further instructions?

A. Yes, he did.

Q. What were they?

A. He told me to backdate these about a year.

Q. After you received these instructions from Mr. Fairchild, what if anything did you do?

A. I went downstairs and prepared three new conveyances.

Q. Did you follow Mr. Fairchild's instructions to increase the acreage?

A. Yes, I did. I prepared a new conveyance with three acres for the Marion County properties three acres for the Mobile County properties and three acres -- excuse me five acres on the Covington County properties.

Q. Did you also follow his instruction also with respect to the dating of the deeds?

A. Yes, ma'am. I backdated them about a year.

Q. I show you what has been marked marked as Government's Exhibit 12, 13 and 14. Start with number 12. Do you recognize that?

A. May I remove it?

Q. Yes.

A. Yes, ma'am, I do. It's not the original. it's a copy of the instrument that I prepared --

Q. First of all, what is it?

A. Okay. I'm sorry. It's an assignment of overriding royalty on oil and gas covering the interest in Mobile County.

Q. Okay. Is that the deed that you prepared?

A. It's a copy of the one that I prepared, yes, ma'am.

Q. Is your signature on it?

A. Yes, ma'am. I signed it as witness.

Q. How about Government's Exhibit 13? What is that?

A. That is an overriding royalty deed.

Q. For what area?

A. Oh, I'm sorry for Marion County, Mississippi.

Q. Is your signature on it?

A. Yes, ma'am, I signed it also as witness.

Q. Did you prepare that deed?

A. I prepared that deed, yes, ma'am.

Q. Exhibit 14 what is that?

A. This is an overriding royalty deed on the interest in Covington County, Mississippi.

Q. Is your signature on it?

A. Yes, ma'am, I signed it as well as witness.

Q. Did you prepare?

A. Yes, ma'am, I prepared it.

Q. What is the date on all of these?

A. I dated them February 25, 1980 that's on this copy.

Q. Were these the deeds that you prepared at Mr. Fairchild's instructions the second time?

A. The second set of instructions, yes, ma'am, these are the ones I prepared.

Q. You put the date February 25, 1980 on them?

A. Yes, ma'am.

Q. Why did you choose that date?

A. Well, actually they're prepared the first week in March of 1981, but I just dated -- Well, let's go back to February 25, it's as good a date as any, we are typing from the original ones that were prepared and just changed the 61 to 81.

MS. LITTLE: Move Government's Exhibit 12, 13 and 14.

MR. FAWER: No objection.

THE COURT: Received.

(Exhibit No. G-12 marked).

(Exhibit No. G-13 marked).

(Exhibit No. G-14 marked).

BY MS. LITTLE:

Q. When you prepared the deeds did you put the name to the person those deeds were going?

A. No, ma'am.

Q. Does the name appear on them now?

A. Yes, ma'am -- Well, let me check them. It appears on -- Yes, it appears on Exhibit 12, 13 and 14.

Q. What is the name?

A. Walter L. Nixon, Jr.

Q. Do you know who typed that name on there?

A. I have no idea who typed that name in there.

Q. After you prepared these deeds what, if anything, did you do with them?

A. I took them up to Mr. Fairchild and I allowed them him to execute the instruments.

Q. Again that means what?

A. That means he signed them as grantor, as the person conveying the interest he signed them then.

Q. Did you obtain the other signatures for the documents?

A. Yes, I went ahead at that time and I signed as a witness -- I need to clarify something here. I did not go back to Sherry Burnett on this particular instrument, Sherry didn't go to work for us until January of 1981, so I went to Billy Riley because he worked there in 1980, and then I took them to Lynn Jones to be notarized and asked her to backdate the notary a year.

Q. Just to clarify, the date on all these deeds is what, the second set of deeds?

A. February 25, 1980.

Q. When were they actually prepared?

A. The first week of March, 1981, they were prepared about a week after the original set was prepared.

Q. After you collected the signatures on the second set of deeds, what did you do with the deeds?

A. I took them up to Mr. Fairchild and he instructed me to hand carry them to Carroll Ingram.

Q. Did you do that?

A. I went to Mr. Ingram's office with the instruments and he wasn't there so I just left them with the secretary.

Q. What did you do with the first set of deeds that you prepared that were dated 1981?

A. Okay. Because we had to keep track of who, what, when and where and as to how much we owned, I had to keep specific records as to how much we owned and what specific properties. so instead of making specific notes, I was not sure who they were going to, I took the original instruments and put them in a manila file folder and put them in my desk and made a note to make a notation on our books that we had conveyed X number of acres.

Q. In the course of your usual work in the oil division, would you have generally -- Would you know when Mr. Fairchild conveyed an oil royalty interest?

A. Yes, ma'am, I would.

Q. Would you know the name of who it would be conveyed to?

A. No.

Q. Did you know in this instance?

A. No, ma'am, I had no idea.

Q. In your work would you know how much was paid for a royalty interest?

A. No, ma'am.

Q. Were you aware in this instance?

A. No, ma'am.

Q. In the course of your work would you be aware if they were verbal negotiations going on between Mr. Fairchild and an outside party for an oil interest?

A. Yes, ma'am.

Q. Did you have any in this case?

A. No.

Q. When was the next time you had any contact with these particular deeds?

A. Well, the next contact I had that had anything to do with those deeds was a telephone call from Carroll Ingram in May of 1981.

Q. And what was the purpose of that telephone call?

A. He wanted to know who to contact to get the Judge's money started.

Q. Did he make reference to these particular deeds?

A. I can't -- I can't say that I specifically remember specific reference. Just by the phone call and the nature of the conversation, I knew which ones he was speaking of.

Q. Did he refer to these properties?

A. He referred to the one in Marion County.

Q. That was of course one of the ones you prepared in February?

A. Right. Right.

Q. And before that telephone call, did you have any knowledge that these deeds may have been connected to a judge?

A. No idea whatsoever.

Q. Did you know Judge Nixon at that time?

A. No, ma'am.

Q. Have you ever met him?

A. I have never in my life met Judge Nixon.

Q. Did there come a time when royalty checks were issued from the Fairchild Corporation to Judge Nixon?

A. Yes, ma'am.

Q. When was that?

A. That was early 1982.

Q. And to your knowledge did Judge Nixon ultimately pay some consideration for these royalty interests?

A. Yes. Yes.

Q. Do you know how much?

A. There were three promissory notes that I became aware of in early 1982.

Q. Do you know how much the notes totaled?

A. There were three notes, one was for $2,000, one was for 3,000 and another one for $4,500.

Q. When did you first become aware of an indebtedness by Judge Nixon to Wiley Fairchild?

A. 1982.

Q. I show you what's been marked as Government's Exhibit 15, 16, 17 and 18. Take a look at Exhibit 15. Do you recognize that?

A. Yes, I do.

Q. What is it?

A. It's a negotiable promissory note.

Q. In what amount?

A. Four thousand five hundred dollars.

Q. Who is listed as the person owing money on that note?

A. Walter L. Nixon, Jr.

Q. How about the next Exhibit, number 16?

A. 16 is also a negotiable promissory note in the sum of $3,000 signed by Walter L. Nixon, Jr.

Q. And Exhibit 17?

A. 17 is also a northbound able promissory note in the sum of $2,000 signed by Walter L. Nixon, Jr.

Q. Are these the notes that you have just referred to that you saw in 1982?

A. Yes.

MS. LITTLE: Move the admission of Government's Exhibit 15, 16, 17 and 18.

MR. FAWER: No objection.

THE COURT: Received.

(Exhibit No. G-15 marked).

(Exhibit No. G-16 marked).

(Exhibit No. G-17 marked).

(Exhibit No. G-18 marked).

BY MS. LITTLE:

Q. Had you ever seen these notes before July of 1982?

A. No, ma'am.

Q. Had you ever looked for any evidence of indebtedness by Judge Nixon for these particular wells?

A. Well, not particularly from Judge Nixon. I looked to see if we received any consideration of any nature. I looked through the receipts for the company W. R. Fairchild Construction Company and Windham and up until these notes appeared in 1982, I never found anything on the books to show any consideration.

Q. How were they brought to your attention?

A. They were brought to my attention by Billy Riley, the office manager.

Q. Did you ever discuss these notes with Mr. Fairchild?

A. Yes, I did.

Q. Why don't you relate that incident?

A. Well, we, Mr. Fairchild --

MR. FAWER: Excuse me. Could we have some idea of the date we are talking about?

BY MS. LITTLE:

Q. When was this?

A. Prior to my seeing these notes, I discussed this conveyance with Mr. Fairchild and then --

Q. Can you try to date that conversation?

A. That conversation took place late January, early February, 1982.

Q. And what happened?

A. I need to preface this by a conversation -- Well, let me clarify this a little bit. There was some concern among myself --

MR. FAWER: Excuse me. Your Honor, I'm not and I assume nobody else is, concerned about his state of mind. If he's got some testimony in response to a question, let him give it. He's an attorney, he ought to know the rules of evidence.

BY MS. LITTLE:

Q. Mr. Jarvis, why don't you relate the incident with Wiley Fairchild, specifically what you observed?

A. All right. I went to Mr. Fairchild's office to ask him whether or not he wanted us to have the oil companies pay the royalties directly to Judge Nixon or whether he wanted these payments to come through our books and be handled in-house.

Q. Was there any further discussion?

A. Yes, there was. He and I discussed as to what difference it made.

Q. And what did he say?

A. Well, basically, I remember my words very plainly, I just told him, Mr. Wiley, it's not my place to judge it right or wrong, but you're too obvious in what you have done.

Q. And what was his reaction to that state?

A. Well, he questioned what I meant and I said it appears this has something to do with Drew.

Q. What was his reaction to that?

A. He became extremely irritated and upset.

Q. Was it after that that you first saw the promissory notes?

A. About two or three days later, these notes appeared in the office.

Q. To your knowledge did Judge Nixon make payments on those notes?

A. Yes, Judge Nixon made payments on these notes. As a matter of fact I was the one who determined how much interest and things like that were to be paid on these notes.

Q. Do you know when Judge Nixon began receiving royalty payments?

A. Early 1982.

Q. And when did he start making payments on the promissory notes?

A. Early 1982.

Q. Do you know if he started making payments before or after he started receiving royalty payments?

A. It was right about the same time.

Q. How long did you work for Wiley Fairchild?

A. From August 20 of 79 through May 6, 1983.

Q. What happened in May of 1983?

A. I was terminated.

Q. Did there come a time when you reported the matters that you have just testified about to the federal authorities?

A. Yes, there was.

Q. When was that?

A. November 3, 1983.

Q. What happened on November 3, 1983?

MR. FAUER: Your Honor, I would object to conversations at that point. What does it have to do with the facts in issue to any conversations --

MS. LITTLE: Can we approach the bench?

MR. FAWER: -- as to what conversations he had between himself and federal authorities in 1983.

MS. LITTLE: May we approach the bench? AT SIDE BAR:)

MS. LITTLE: I have about four questions left. I'm simply going to establish that he reported the matter to the FBI in October of 1983, I'm not going into specifics.

MR. FAWER: Tell us the specific questions.

MS. LITTLE: Did you report the matter to the FBI; did you reveal your identity; did you later reveal your identity, and what was your relationship with the FBI.

MR. FAWER: If she wants to ask if he reported it to the FBI, that's fine, beyond that, she's just trying to soften the blow.

THE COURT: Overruled. (IN OPEN COURT:)

BY MS. LITTLE:

Q. Mr. Jarvis, I asked you if there came a time that you reported these matters that you just testified about to the authorities?

A. November 3, 1983.

Q. What exactly did you do to report the matter?

A. Initially I called the FBI office in Washington.

Q. Why did you call Washington?

A. Because I didn't trust anybody locally.

Q. Did you reveal your identity when you called the FBI?

A. No, ma'am, I did not.

Q. Did you have conversations with the FBI following that?

A. Yes. The --

Q. That's it. Did you reveal your identity in those conversations?

A. No, ma'am, I did not.

Q. Did you eventually reveal your identity to the FBI?

A. Yes, ma'am, I did.

Q. When was that?

A. February 1984.

Q. What has been your relationship with the FBI since then?

A. Basically, they have been questioning me as a witness in this action.

MS. LITTLE: Nothing further.

THE COURT: Cross-examine.

MR. FAWER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FAWER:

Q. Mr. Jarvis, I'm Mike Fawer, we have never met. Is that correct?

A. No, sir, we have not.

Q. Nor did you agree to be interviewed by me or anybody on behalf?

A. I did not agree to be interviewed by anybody.

Q. The question is you declined to be interviewed. Is that correct?

A. That's correct.

Q. Let's go back a little bit. As I understand it, you came to work for Mr. Fairchild sometime in 1979?

A. August 20, yes.

Q. And that's because your wife, I take it, is related, distantly related to Mr. Fairchild, you met him and you were offered a job?

A. That's basically correct, yes.

Q. You were living in Florida and had not gone to law school at the time you lived in Florida, Lake City?

A. Yes.

Q. He offered you a job, you took it?

A. Not initially. We had some negotiations over several months and I ultimately took his offer

Q. You moved to Hattiesburg and started law school?

A. I started law school in fall of 80, yes, sir.

Q. If I understand correctly, around that time you were earning a salary from Wiley Fairchild. Right?

A. That's correct.

Q. I guess he paid for your law school education as well?

A. The construction company paid for my law school education.

Q. The construction company, so we all understand, you're not a Fairchild, but Wiley Fairchild made the decision to pay for your education. Right?

A. The construction company's limited partnership as the general partner. He was the one who ultimately said, yes, he would pay for it.

Q. So the jury understands, the limited partnership consists of members of the Fairchild family, correct?

A. There are other members besides Fairchild, but yes, sir, it's basically made up of members of the Fairchild family.

Q. Okay. You became intimately familiar with that limited partnership, did you not?

A. I did.

Q. It was a -- I take it that limited partnership has assets in many, many millions of dollars, correct?

A. That's correct.

Q. You worked for him from 1979, and then went to law school at the expense of the company, and was fired in May of 83?

A. That's correct.

Q. And you were fired not by the company, but by Wiley Fairchild and his brother, Rodney Fairchild?

A. Rodney Fairchild made the phone call.

Q. Rodney Fairchild, you have no doubt it was Wiley Fairchild upon whose instructions Rodney operated, right?

A. Wiley calls 99 per cent of the shots for that business.

Q. Okay. So he's used to giving instructions. When Rodney told you you're through, you knew it was Wiley telling you that, right?

A. Yes.

Q. And that had something to do with some -- Wiley, Wiley likes polygraphs, he likes lie detectors?

A. Wiley just loves them, yes.

Q. He asked you and others, he wanted himself and some others to take it in connection with some transaction that was going on, right?

A. Yes.

Q. Business transaction, right?

A. It was to invest money in a restaurant venture in Tuscaloosa.

Q. You were trying to talk him into that venture?

A. No, sir.

Q. Were you suggesting that he be in that venture?

A. No, sir.

Q. Okay. It was a venture, in some way you were involved in it because he was asking you and himself and the others involved to all take lie detectors?

A. My instructions I was to listen to the presentation by the parties requesting to borrow the money, to evaluate it and give him my ultimate opinion on whether it was a good venture or not.

Q. Who did he want to take the lie detector?

A. Myself, he and Rodney.

Q. You and he and his brother?

A. Yes.

Q. You view that as sort of a strange request?

A. Yes, sir, I did.

Q. Why a lie detector? What did it mean to you?

A. I have no idea.

Q. In any event, within a short period of time he fired you because you wouldn't take it?

A. Next day.

Q. This conversation as I understand it takes place at least a year and three months approximately after your conversation with him in which you suggest to him there was some wrongdoing in the transaction with Judge Nixon, right?

A. We had a conversation then and subsequent conversations concerning it.

Q. But my point to you, sir, is that in January of -- or February 82 is when you ostensibly had this conversation in which he became, what did you say, perturbed? What was your phrase?

A. I don't remember my exact --

Q. Tell us what he was?

A. He became upset.

Q. Okay. Called you, he called you crazy?

A. No, he did not.

Q. He told you there was nothing wrong with the transaction, right?

A. Not in those words.

Q. He told you when you suggested it had something to do with the D..w Fairchild matter, that to coin a phrase, you were nuts, it had nothing to do with it?

A. That is incorrect, sir.

Q. Tell the jury what he told you?

A. He told me he was too smart to get involved in something like that.

Q. He had spent too much time getting himself in fact I believe involved in a bribe, is that what he told you?

A. Not in those words, no.

Q. Was that the sum and substance of what he told you?

A. Not exactly.

Q. Sir, is it fair to say when you suggested some wrongdoing, he denied that there was any wrongdoing?

A. That is fair to say, yes.

Q. Fair to say, okay. So the criminality at that point is in your mind, right? You're the one who is suggesting the wrongdoing, right?

A. No, sir, my suggestion to him was that if in fact it did have to do with Drew that, he was too obvious in what he had done.

Q. You suggested to him that if it had something to do with Drew, it was too obvious, right?

A. That's correct.

Q. You were suggesting, were you not, that if it had something to do with Drew, it was criminal, and he was being too obvious and would be caught, correct?

A. Yes, sir, my intentions were to protect my employer.

Q. And in fact he told you, in effect, it had nothing to do with the Drew Fairchild matter, correct?

A. The ulitmate summation could be said that way.

Q. You don't have a problem with understanding what I say, do you?

A. No, sir, I just have problems with the way you're saying it.

Q. The bottom line, he told you there was nothing criminal about the transaction?

A. Bottom line is he denied it.

Q. Do you have a problem between denied and told you there was nothing criminal?

A. Yes, sir.

Q. Okay. May 83, over this lie detector issue, you were told don't -- you were no longer to come into the office, right?

A. That's correct.

Q. Your wife of course was still related distantly to him, correct?

A. Yes.

Q. Why are you smiling?

A. It's obviously, if she was related before she would be related afterwards.

Q. I appreciate it, I'm sorry, I didn't realize lies that was funny. In any event, he still kept you on the payroll, he still paid for your -- company still paid for your education, he just didn't want you around the office, correct?

A. That is correct.

Q. I guess you didn't tell anybody about it, was it right around that time, well, let withdraw that. Ask it another way. You were upset when you were fired, right?

A. I would say, yes.

Q. Okay. And you went back into the office to try to put things back together?

A. Approximately a week later I went to Mr. Fairchild to sit down with him.

Q. Do I understand correctly that there was some matter that had to be taken care of up in Jackson, is that right?

A. There was --

MS. LITTLE: May we approach the bench on this, please?

THE COURT: Yes.

(At the bench:)

MS. LITTLE: I wonder if we could get a proffer.

MR. FAVER: Yes, sir. He accused the man of killing him, of fixing his brakes to kill him. He accused Wiley -- the man is crazy. I'm going to show it in this courtroom. Their witness is off his rocker. He told, he told the FBI that Wiley Fairchild put hydraulic brake fluid in his car that was driven on this occasion to Jackson in order to kill him.

MS. LITTLE: I think this is getting pretty far afield; it's highly prejudicial.

MR. FAWER: Because it shows his bias, it shows the way he creates a story, the way he told this to the FBI, to lead them on.

MS. LITTLE: It's prejudicial against Mr. Fairchild.

MR. FAWER: He's not on trial.

MS. LITTLE: I know that.

THE COURT: Go ahead and show it.

MR. FAWER: Thank you.

(Open court:)

BY MS. LITTLE:

Q. As I understand it, you were asked to go to Jackson on some business for the company, even though you were no longer to be employed at the office, right?

A. That's correct.

Q. And Wiley Fairchild said why don't you take the company car, the car you had been using with the company, right?

A. That's correct.

Q. In some way the car broke done or the brakes failed on the way to Jackson?

A. That's correct.

Q. As I understand it, in your mind, Wiley Fairchild tried to have you killed, am I correct, sir?

A. Not at that particular point when the car broke down, no, sir.

Q. When you say not at that, tell the jury whether you told the FBI that you learned from some mechanic to whom you brought the car that there was hydraulic fluid put in it, hydraulic fluid instead of brake fluid, correct?

A. Correct.

Q. And you told the FBI that was proof that Wiley Fairchild was trying to commit murder on you, correct?

A. Ultimate summation could be that.

Q. Did you tell that to the FBI?

A. Not in those words, but basically, yes.

Q. Sir, so we understand, when I ask you a question I'm not quoting you. I'm asking whether you told the FBI, do you accuse Wiley Fairchild of attempted murder? Did you do it?

A. Not in those words, but ultimately I'd say you could say yes.

Q. I see. What words did you use?

A. Just explained to them the facts involving the whole situation, the way the mechanic had come in and said come look at this before I touch it. When I got back to Hattiesburg, talked to the shop foreman to see if there might have been something done at the shop; there had been nothing done by the maintenance personnel at Fairchild Construction. Ultimately my suspicions were that the car had been sabotaged.

Q. And this by the man who put you through law school and pai your salary and had fired you, correct?

A. That's correct.

Q. Had you ever known of Wiley Fairchild to engage in any act of violence in his life?

A. I haven't known Wiley Fairchild long enough to say whether he has or hasn't.

Q. Do you know in your experience from August of 79 whether Wiley Fairchild had ever engaged in an act of violence?

A. Personally, I have no knowledge of Wiley Fairchild ever engaging in any violent act.

Q. The enterprise Wiley Fairchild was the executive in charge of, Fairchild empire if we may call it, multimillion dollar empire, that's correct?

A. That's correct.

Q. He ruled or had control by virtue of the fact he had the proxies of the various other limited partners, am I correct?

A. That's incorrect.

Q. You tell us how he had power?

A. Mr. Fairchild is more or less, oh, I don't know how to explain it other than to say he's probably the more forceful of the children, he rules things with an iron hand. As far as the limited partners go you do what Wiley says or we do things that make you wish you had.

Q. Or we what?

A. Just ultimately you do what Wiley says or else.

Q. Fair to say you started spreading a few rumors, writing some letters to the various limited partners?

A. Assume so, yes.

Q. You don't assume so; you did it. Why would you assume what you did?

A. I wrote some letters?

Q. Did you suggest to the others Wiley tried to kill you?

A. I never wrote a letter concerning that.

Q. Did you ever communicate that thought to anyone?

A. To the FBI.

Q. And to members of the family?

A. To one member of the family.

Q. Did you tell that one, don't tell anybody else, keep it to yourself?

A. No.

Q. Okay. Did you also sort of communicate to them, suggest that Wiley was involved in other criminal endeavors?

A. I'm not certain if I understand your question.

Q. Well, let's put it this way. Did you try to sow a fair amount of dissention among the limited -- excuse me, sir, is there something funny about what's going on here?

A. No, there is nothing funny, Mr. Fawer.

Q. Okay, then stay with my question. Did you try to sow some dissention among the family members in an effort to pull control away from Wiley Fairchild?

A. No, sir, I have never in my life sought to pull control from Wiley Fairchild on that company.

Q. Wiley Fairchild thought you were doing so, didn't he?

A. Wiley Fairchild told that to explain this chain of events.

Q. To whom did he tell it?

A. That was put in correspondence going to the other family members.

Q. The very same family members that you had communicated to?

A. The one family member that I had communicated to.

Q. Let's talk now, now we're in May, you're out, Wiley has just tried to kill you, right?

A. That is correct. That's correct.

Q. And you then continue law school, graduated when?

A. I finished my classes in December of 1983.

Q. And as I understand it, you went to work for a law firm, was that in December or a little earlier than that?

A. It was April, no, excuse me. March of 84 I went to work for them.

Q. You picked the one law firm, Zachary law firm, is that right?

A. I picked is not exactly correct.

Q. You sought employment there?

A. I sought employment with every law firm here in Hattiesburg.

Q. You chose the one firm with whom Wiley Fairchild was bitter enemies, correct?

A. I chose the firm that offered me a position.

Q. Was it not a fact you choose the firm with whom, the senior partner of whom was a bitter enemy of Wiley?

A. Mr. Zachary offered me a position, yes.

Q. Did you hear my question?

A. Yes.

Q. Was it relatively well articulated??

A. It was not a correct way of summation.

Q. Put it another way. Were Mr. Zachary, the senior Zachary and Wiley Fairchild at odds with one another?

A. Over the years I had heard that from Mr. Fairchild.

Q. Fairchild told you, he's no friend of mine, right?

A. That's correct.

Q. And you went to work for him, right?

A. That is correct.

Q. Before going to work for him, you started making these phone calls to the FBI, right?

A. That is correct.

Q. Okay. The thrust of it, you started by making some anonymous calls, right?

A. That is correct.

Q. You didn't want anyone to know what you were doing so you started calling them, telling them, dropping the seed that there was some oil man in Mississippi who had bribed a judge,

right?

A. Your summation is incorrect.

Q. We're going to read from the transcript.

A. Please do.

Q. Then we'll see. Have you read them over?

A. I have.

Q. Okay. Is it not fair to say that what occurred is you were telling the FBI that the transaction you described here in court had occurred and that the backdating had occurred in order to hide the fact that it was done for purposes of influencing the Drew Fairchild case?

A. That's correct.

Q. Isn't that what you were doing?

A. That is correct.

Q. You didn't tell them who you were, you pretended you were some outsider with information, is that right?

A. That is correct.

Q. You had not one whit of information about what really had gone on in that transaction, had you?

A. That is incorrect.

Q. Did you know, have you ever discussed with Wiley Fairchild before November, how the negotiations first -- when the negotiations took place, leading to the assignments to Walter Nixon, did you ever talk to him about it?

A. No, sir, other than those two conversations that I had.

Q. So you knew nothing about the relationship of the dating of that discussion and the Drew Fairchild case, did you?

A. To answer that question would have to, will require me to relate comments that Wiley had made in my presence to us.

Q. That's fine. I have no problem. My question to you is, when did the Drew Fairchild case occur?

A. Fall of 1980.

Q. When?

A. I believe the actual plane landed in August of 80, and then Drew subsequently became involved about a month or two later, I'm not sure exactly when Drew's involvement --

Q. How did you learn about it?

A. We went in the office one morning and it was discussed there in Wiley's office.

Q. In February of 81, was there any -- did you know of any indictment against Drew? At that time in February of 81?

A. In February of 81 I knew that there was a plea agreement in federal court.

Q. And you assumed, I take it, what you were telling the FBI, in some way the deal, whatever it was, was connected to this transaction, correct?

A. Correct.

Q. You told the FBI in fact, without knowing anything, you had the temerity to accuse this man of having steered the case to the state, didn't you?

A. That is correct.

Q. Did you have an iota of information of how that transaction came about?

A. As far as this particular transaction?

Q. This transaction.

A. No.

Q. Do you know, sir, that it occurred in 1979 and early 1980?

A. Based on my dealings with Wiley, I would have known had it of taken place then.

Q. Sir, had you ever discussed -- who is Carroll Ingram?

A. He's an attorney here in Hattiesburg.

Q. Do you know that Carroll Ingram in 1979 discussed and arranged with Wiley Fairchild to sell an interest to Walter Nixon? Did you know that, sir?

A. If it had happened I would have known.

Q. You sit on that stand and tell me that you would have known everything that Wiley Fairchild did with Carroll Ingram?

A. No, I'm not going to make that statement.

Q. Can you tell this jury that no such communications occurred between Ingram and Fairchild?

A. I could not say that from the stand, no.

Q. But you didn't hesitate to accuse a human being of criminality, right?

A. Based upon the facts as they were presented to me, I can do that, yes.

Q. Based on your suspicious mind, correct, sir?

A. Based upon what the facts were as they appeared to me.

Q. The facts as they appear to you was somebody told you Wiley Fairchild called you in and said backdate this deed, correct?

A. That's correct.

Q. Okay. You had backdated deeds before, you testified to such. Am I correct, backdating is not uncommon, am I right?

A. That's correct.

Q. But you led the FBI to believe that backdating equated with criminality, didn't you?

A. Not necessarily just backdating, no.

Q. Did you tell them this is most likely the key, that the key to it is the backdating?

A. That would show the major portion of the case, yes.

Q. Let me understand something. Wiley tells you to do what he's done in other cases, backdate the deed, right?

A. Yes.

Q. That's a fact that he told you on February 25, 1981, right? Or few days later?

A. First week of March, 1981.

Q. Do you know what communications he had with with Carroll about the backdating, Carroll Ingram?

A. No.

Q. Carroll is a lawyer, right?

A. That is correct.

Q. Respected lawyer in Hattiesburg, right?

A. Sometimes.

Q. What do you mean sometimes, you don't like the man?

A. It depends on your personal opinion of people.

Q. I understand that. He's a lot more successful than you are?

A. He's been practicing longer.

Q. He was head of the Judiciary Committee of the legislature, right?

A. I know he was in the legislature.

Q. For eight years, nine years?

A. I have no idea how long.

Q. He's a man in his 40's, about 45, 50 years of age?

A. I don't think he's that old.

Q. Fine. He's someone, he was Wiley's attorney, correct?

A. He was one of many attorneys Wiley used.

Q. Fine. Someone Wiley trusted, right?

A. Off and on, yes.

Q. Wiley, so we understand, the jury understands, Wiley's personality is such that he blows hot and cold in terms of who he likes and doesn't like, fair statement?

A. That's correct.

Q. He has what we might call a fluid personality?

A. I would say so.

Q. Volatile at times?

A. Extremely so.

Q. Not terribly articulate?

A. That's correct.

Q. Bright but not very well educated?

A. Correct.

Q. Talks not in riddles, but has a difficult time, goes off on tangents very frequently, correct?

A. Yes, that's correct.

Q. And very often says what's convenient for the moment, correct?

A. He often says what's on his mind, yes.

Q. I wasn't asking about what's on his mind, that would mean he was blunt. In addition to being blunt, he can at times, he can tell you -- I'll withdraw the question. He's blunt at times, all right. In any event, you knew back in 1981, February, a man's asking you to backdate it, that's not uncommon, right?

A. That's correct.

Q. I take it it's not uncommon because often if a transaction occurred let's say a year before, the deal had been struck a year before and the papers were being prepared six, eight, ten months later, it is proper to date the deed or the documents back to when the deal was really struck, right?

A. Not in this particular case.

Q. I'm talking normally. If in general -- you told us backdating isn't unusual -- forget those for a minute. We'll come to those, believe me. You told us, just told this jury under oath backdating is not uncommon, correct?

A. Correct.

Q. You're not suggesting -- are you suggesting that's criminal when it's done?

A. The actual transaction, backdating itself, no.

Q. Okay. So it has, it can have a legitimate purpose?

A. It could have, yes.

Q. I take it if the transaction occurred back at an earlier date than the execution of the documents, that would be when you would want it dated, that would be called backdating, right?

A. That would be correct.

Q. Is it fair to say, even in law, as a man who practices law, backdating is something that is acknowledged to occur in the courts? There are cases that validate backdating, am I correct?

MR. LITTLE: I object to this, Your Honor.

BY MR. FAWER:

Q. Are you a lawyer?

A. I am.

MS. LITTLE: May we approach the bench?

THE COURT: Yes.

(At the bench:)

MS. LITTLE: Your Honor, this witness is a fact witness, not to testify to the law.

MR. FAWER: He's a lawyer. I can question him about his knowledge. It's his state of mind.

MS. LITTLE: Mr. Fawer is asking questions about what the law is that pertains to contracts.

MR. FAWER: He said he backdated commonly, that there is nothing wrong with it. I'm simply asking him as he understands that is a recognized thing to be done under the law.

MS. LITTLE: I would ask Mr. Fawer's questions be restricted to matter of facts, not of law.

THE COURT: Well, I think you're getting a little far afield on this thing.

MR. FAWER: I'll move on. I don't see, we're asking a lawyer if that's something that's perfectly legal.

THE COURT: He's already said he's done it on occasion.

MR. FAWER: That's fine.

THE COURT: Okay.

(IN OPEN COURT:)

BY MR. FAWER:

Q. So what you knew back then is that there was a request, right, he called you on the intercom, -- excuse me, called you in the office and asked you to date it back and change the acreage. Is that correct?

A. That's correct.

Q. Now I take it Wiley Fairchild had his own office. Correct?

A. That's correct.

Q. Many things went on in his office that you were not privy to. Is that correct?

A. Sometimes.

Q. Let me see if I understand it. Fairchild Construction Company is on Highway 49. Correct?

A. That's correct.

Q. Out towards the intersection of 59 here. Is that correct?

A. That's correct.

Q. I guess there's a maintenance shop at one point and there's a separate office building. Is that correct?

A. That's correct.

Q. And there were two entrances where you walk up a few steps. Correct?

A. To the building?

Q. The side entrance.

A. There are two side entrances, a front and a rear entrance to the building, yes.

Q. There's one of those entrances that goes directly into Wiley Fairchild's office. Is that correct?

A. That's correct.

Q. People at times, at Wiley's request enter through that office. Is that correct?

A. That's correct.

Q. So if someone is in that office talking to Wiley Fairchild and came in that way, and you weren't in office, you wouldn't know what went on in Wiley's office at that the point in time, would you?

A. That's correct.

Q. Are you privy to Wiley's phone conversations with people all the time?

A. No.

Q. Do you have any idea as you sit here what conversation occurred before between Wiley Fairchild and Carroll Ingram to cause the changing in the the acreage and the backdating?

A. No.

Q. None whatsoever. Correct?

A. That's correct.

Q. You don't even know if one existed?

A. One what?

Q. You on don't even know if such a conversation existed, took place?

A. No.

Q. So Wiley calls you in, you don't know what -- You knew that the deeds had gone over to Carroll Ingram. Right?

A. I had left them with Mr. Fairchild. I did not know how they got to Carroll Ingram whether he picked them up or Wiley carried them down there, the first set.

Q. Even you could conclude from this document when it came back that this had been returned to Wiley Fairchild from Carroll Ingram?

A. That's correct.

Q. Said it right on it?

A. That's correct.

Q. You didn't have to be Dick Tracy to figure that one out. Is that correct?

A. That's correct.

Q. You didn't know what had been said between the two of them to have Wiley request you backdate the deed and change the acreage. Correct?

A. That's correct.

Q. Okay. You don't know as you sit here and you can't help the jury in any way as to when the actual arrangement between Judge Nixon and Wiley Fairchild took place. Correct?

A. Other than conversation from Wiley, no.

Q. Subsequent to that?

A. Subsequent to this, yes.

Q. Okay. We'll come to it. But as you sat there, if I understand you correctly, Wiley subsequently to that day, when you suggested that there was any connection, when you suggested it, he denied it. Correct?

A. That's correct.

Q. You, though, took it and chose without any real knowledge to make a charge of a felony against this man. Correct?

A. I think the proper way to term it would be that I contacted the FBI and I said I think I have information that would show the bribery of a federal judge.

Q. Correct. You went further than that, didn't you? You suggested the way it was accomplished, did you not?

A. That's correct.

Q. Let me ask you something hypothetically. If in fact the transaction took place any time before August of 1980 when the drug bust occurred, then surely there could be no connection. Correct?

A. Are you saying if it took place prior to the airplane at the airport?

Q. Right.

A. I would say no connection, if it had taken place then.

Q. Okay. So what has occurred that by virtue of your mentality, your allegations, your speculation, and your suggestion that it occurred sometime later, you have chosen to destroy a human being for your own purpose?

A. That is incorrect, sir.

Q. We'll go forward and see. Let's look at your conversations with the FBI. Do you have -- Do you have copies of those documents?

A. I do not here at this time, no.

Q. Fine. We'll make one available to you. Let me give you a copy of what I have marked as Defendant's Exhibit 10. Why don't you peruse it and you will see that it's the recording or the transcript of your conversation with the FBI on November 10 of that year, correct, of 1983?

A. Yes, sir, this would have been the second telephone call to them.

Q. Right?

A. That's correct.

Q. Your first one was on November 3. Correct?

THE COURT: Will the lawyers come up to the bench just a minute?

(Bench conference not reported.)

THE COURT: Are there any witnesses in the courtroom?

MR. DREW FAIRCHILD: I testified yesterday, Your Honor.

THE COURT: You will be excused.

MR. DREW FAIRCHILD: Yes, sir.

BY MR. FAWER:

Q. You have had --

MR. FAWER: May I proceed, Your Honor?

THE COURT: Go ahead.

BY MR. FAWER:

Q. Mr. Jarvis, you have seen this before?

A. Yes.

Q. I take it there was some planning that went into this whole idea of calling the FBI and your whole charade was thought through in some way. Right?

MS. LITTLE: I object to the form of the question. It's characterizing --

THE COURT: Overruled.

BY MR. FAWER:

Q. You did engage in a charade, didn't you?

A. That is incorrect.

Q. You pretended to be somebody you weren't?

A. I attempted to conceal my identity for the fear of the people that I was dealing with here.

Q. The killers at the Fairchild Company?

A. I was talking to a federal officer about a federal judge.

Q. You were afraid Judge Nixon was going to have you bumped off?

A. No, sir, I had no assurance whoever I talked to with the federal government would not just get off the phone and pass this information on to the federal judge.

Q. But you pretended to be someone other than a person working on the inside of the Fairchild Company. Is that correct?

A. That's correct.

Q. I take it you thought that through before you called them?

A. That's correct.

Q. You had also taken from the Fairchild Company certain documents?

A. That would be correct.

Q. You didn't, you were going through the charade of that, you really hadn't done that, though you still had to in some way get those documents, that you just heard they were in existence. Is that correct?

A. That's correct.

Q. You were going through the speculating of who they could talk to, the secretary, Riley, Jarvis all these people who maybe the FBI could talk to to find out more of this information. Right?

A. That's correct.

Q. You were dropping little tidbits to them as you went along. Is that right?

A. That's correct.

Q. You were just sort of titillating them. Do you know what the word means?

A. I know what the word means.

Q. Inciting them. Right?

A. That was not the intent. The intent was to give them information. They could follow up and get their own information.

Q. I look at this document and you start to tell them about the checks going from Fairchild to Nixon. Right?

A. That's correct.

Q. You told them which bank to look to. Right?

A. That's correct. That's right.

Q. There was nothing hidden about the checks? Those checks were sent down to Nixon's office from 1982 on. Right?

A. That's correct.

Q. Just so we don't get too wound up in your scenario, these deeds were recorded in three different counties around the country. Right?

A. That's correct.

Q. You know that, didn't you?

A. I didn't know until November of 1983 they were recorded but I did ultimately find out they were recorded.

Q. You did not know it but is it fair to say they had been recorded back in 81? You know that?

A. I'm not sure of the exact date of recording.

Q. Would you accept April of 81 as the date?

A. I'll accept the fact.

Q. Would you accept the fact Carroll Ingram had them recorded?

A. I'll accept that.

Q. Two of them, they were recorded in counties where he's the sitting judge, weren't they?

A. Yes.

Q. Ever dawn on you that's a hell of a way to keep something confidential, to record it in the public record. Right?

A. That's correct.

Q. Did it dawn on you, hey, wait a minute, what's going on here, maybe I'm wrong?

A. That's why I went to Wiley and confronted -- well, not confronted, told him how obvious this whole transaction was.

Q. And he told you it was not so. Correct?

A. That's correct.

Q. Okay. Despite his telling it to you, despite the public nature of the recording of the deeds -- By the way, what else was publicly recorded, besides the deeds?

A. I'm not sure.

Q. About the division orders?

A. You don't record a division order.

Q. Excuse me, they were -- I beg your pardon, the producing companies, Getty Exxon -- Who was the third one, Union?

A. Union.

Q. Did they copies in their files?

A. Yes.

Q. Walter L. Nixon, signature right next to his name, right?

A. That's correct.

Q. Banks that have cancelled checks going through banks, checks that he's paying to Fairchild, Fairchild is paying to him, you know the FBI has subpoena power?

A. Yes.

Q. All right. Hell of a way to conceal something, wasn't it?

A. That's why I went to Wiley about it.

Q. But it was after you went to Wiley that you went through the charade with the FBI. Right?

A. That's correct.

Q. Okay. And let's just look at page ten, you got it there? I take it W-S are the initials, so we understand, Whitespunner, that's the name of the FBI agent you were talking to?

A. That's correct.

Q. Did you know that was his name at that time?

A. At that time I was talking to him?

Q. Yes.

A. Yes.

Q. And UM is you, it's not Skip Jarvis, UM means unidentified male?

A. That's correct.

Q. Okay. Unidentified male says, now, like I told you last week -- Because you had talked to them the week before. Right?

A. That's correct.

Q. The week before is the first time you called them?

A. November 3 was the first time, yes.

Q. Week before. Right?

A. That's correct.

Q. And at that time they didn't expect your calls so I take it they hadn't pressed on the recorder machine. Right?

A. I have no knowledge as to why it was not taped.

Q. To your knowledge it wasn't?

A. To my knowledge it was not.

Q. The second call, they hoped you would call back, sure enough, unidentified male calls back and here we have the tape transcript?

A. Right.

Q. You say, like I told you last week, the interest or the conveyance that you saw, and when any questions are asked, they're going to be shown notes, everything backdated prior to the date of arrest of Fairchild's son. That's what you were telling them. Right?

A. That's correct.

Q. Okay. That was, from what I understand, done to get this, to show like it was done prior to the whole thing, not at the same time?

A. That's correct.

Q. So you're telling the FBI that it's your understanding, based on nothing that you knew at the time, right, except the existence of backdating?

A. That is not correct.

Q. What did you know? Tell us what you knew aside from the

backdating that tied this into the Drew Fairchild case.
A. Okay. Ultimately I confronted Mr. Fairchild about that.
Q. You told us about that.
A. Okay. I had a subsequent -- Fairchild, originally I thought Mr. Fairchild was the victim of an extortion scheme down to that, in November or December.
Q. Which year?
A. Of 1982. Had another conversation with him concerning other case and the conversation was whether to file in federal court or in state court --
Q. Let me understand this conversation about another case. Let's talk about this.
A. It ties directly into this.
Q. Let's go into it. You go to Wiley -- Let me ask you something. Do you view yourself as having a particularly suspicious mind?
A. No, sir, I don't.
Q. Oh, okay. You were discussing a lawsuit he wanted to file. right?
A. That's correct.
Q. And whether to go into state court or federal court to file the lawsuit?
A. That's correct.
Q. It involved one of the wells, he wanted to file a suit against Getty?

A. It involved many wells. It was --

Q. One of these wells?

A. It would have involved just about every well Fairchild had an interest in.

Q. Every well. I don't imagine they were all worked by Getty, were they?

A. No.

Q. It had to be the wells where Getty Oil Company was the producer?

A. To clarify, it would have been numerous suits against numerous operators.

Q. One of whom was Getty?

A. Yes, sir, one of whom was Getty.

Q. He said I wanted to go into federal court?

A. Right.

Q. Federal court would have been Southern District of Mississippi?

A. His instruction to him was it have the filed in federal court, have it filed by Carroll Ingram and heard by Judge Nixon.

Q. You knew it couldn't be filed in federal court, because one, Walter Nixon had an interest in one of the wells. Correct?

A. That's correct.

Q. You told him that?

A. That is correct.

Q. He would have to recuse himself?

A. That is correct.

Q. Number two, you knew there was no way for Carroll Ingram to get the case before a particular judge because there's a random selection of cases in the federal court?

A. There's supposed to be.

Q. Are you accusing the court in which you're now testifying of corrupting itself by not engaging in a random selection of allotment of cases? Are you making that accusation now?

A. You are asking me about what was going through my mind in 1982, before I had any dealings with the federal court in the Southern District of Mississippi.

Q. You just said, sir, we can read it back, when I said you know there is a random allotment -- So the jury understands, a wheel is spun and the name of a judge, unbeknownst to him, pops up and his initials go on that case. Correct?

A. That's the way it should be done, yes, sir.

Q. You just suggested that's the way it's supposed to be. Implicit in that answer is that it's not done that way?

A. You're reading that into it, yes, sir.

Q. Is that a fair reading?

A. (Shrugs.)

Q. Is it a fair reading, Attorney Jarvis?

A. I am not accusing this court of anything, sir.

Q. Have you -- You have just implicitly accused this court or some member of the court staff of committing a felony. Now I would like you to tell this judge and this jury what basis you have for suggesting that anyone has ever tampered with the random selection or fandom allotment process?

A. Mr. Fawer, you are twisting and contorting my words.

Q. We'll let the jury determine that. You tell us right now if you have a scintilla and an iota of proof, evidence of suggestion, surmise, anything that mind of yours wants to say, that suggests there is anything wrong with the random allotment of the selection of cases in the Southern District of Mississippi, tell them now or say you don't know anything?

A. I'm making no such suggestions that there is an impropriety by anyone in this court. As far as random selection, my answer if I'm correct, was there was supposed to be a random selection.

Q. What does that mean, there is supposed to be?

A. I have no knowledge whether there is or is not.

MS. LITTLE: Objection, Your Honor. He's taken it far enough.

MR. FAWER: I agree.

THE COURT: I agree. Let's get off the subject and move on.

BY MR. FAWER:

Q. That's what he said. And this other case, the case wasn't filed in the Southern District. Right?

A. Sir, the reason I wish to discuss that conversation is because at that point I realized Wiley was not the victim of an extortion scheme, if he was willing to put himself back within their jurisdiction.

Q. Let me understand something. Wiley Fairchild is not a lawyer. Right?

A. No, sir, he's not.

Q. A lot of people say -- Have you ever heard anybody say I'd like to go to federal court because I'd like this judge or that judge to hear it?

A. Sure.

Q. All lawyers have done that?

A. We have probably all done that. That's right.

Q. You make choices based on that when you're a lawyer. Right?

A. That's correct.

Q. You're ascribing that conversation to mean that this case, the one we are involved in here, meant that Walter Nixon was on the take? Is that your conclusion?

A. My conclusion is based on comments made to me by my employer whom I was trying at this time to protect.

Q. You have been doing so ever since. Right?

A. No, sir, that is not correct.

Q. Let's keep going. You were there at page ten. In here accused him that everything was backdated prior to the date of the arrest. Isn't that what you said?

A. That is correct.

Q. And that that was done to show that the reason for the backdating was to conceal that it was connected to the Drew Fairchild case. Correct?

A. That was my assumption at that time.

Q. Pure assumption and that's what you're telling the FBI?

A. That's correct.

Q. You did not have any evidence whatsoever that the two were linked at all. Correct?

A. Other than comments coming from Wiley Fairchild himself, no.

Q. You told us the two comments, his denial that they had anything to do with it and his desire to get the case before Judge Nixon in federal court, this other case?

A. And his comments that they were trying to up the ante, they wanted more to handle it.

Q. Let's come to that next, I want to come to that next. We'll come right to it. Okay?

A. Okay.

Q. But let's do it in order. Okay?

A. As.

Q. As I understand it you then told them on the next page or perhaps at -- at page 14, excuse me. The phrase you just used.

there it is, you see it in the middle of the page?

A. What page?

Q. 14.

A. I'm not sure what you're referring to on page 14.

Q. That's where you use the phrase up the ante?

A. Which?

Q. And down there at his office, Fairchild made comments about how they were trying to up the ante?

A. Okay. I see it now.

Q. To get him to take care of it?

A. That's correct.

Q. When did that happen when? Did that conversation take place?

A. The initial conversation took place in the fall of 1980 and continued for several months.

Q. Fall of 80?

A. Yes, sir, subsequent to Drew Fairchild's arrest.

Q. Who is they?

A. He always referred to them as they.

Q. They, you said a a, they must mean Judge Nixon, right?

A. I assume they included Judge Nixon.

Q. Wiley Fairchild never mentioned Judge Nixon to you, did he?

A. No, sir, he did not.

Q. They were trying to up the ante, did you ever hear the name Bud Holmes?

A. Yes, sir.

Q. His blackmail extortion I'm talking about, had to do with Bud Holmes and Carroll Ingram. Right?

A. Wiley did not discuss the specifics of his dealings with --

Q. You just took it to mean that Judge Nixon was one of those upping the ante?

A. That's correct, sir.

Q. If I'm not mistaken, you read this over very carefully because you wanted to make sure the FBI understood what you mean if it was cryptic. Right?

A. That's correct.

Q. You said, they, quote, unquote, were trying to get the ante raised, that he would be paying if they were to, quote, handle Drew's case. You won't find it on there, I'm reading from your notes. You want to see them?

A. No, I've seen a copy of them.

Q. You wrote them?

A. That's correct.

Q. You were clarifying this point. Right?

A. That's correct.

Q. And they were trying to do that to handle Drew's case. Correct?

A. That was my understanding, based on what Wiley had told me.

Q. And this was in 1980?

A. Beginning in the fall of 1980, yes.

Q. Let me understand, did you know as a practical matter, maybe you have learned it since but did you know that in the fall of 1980, December of 1980 and late November of 1980 the Drew Fairchild case was a dead issue, he made his plea agreement, signed, sealed and delivered?

A. I knew that he had signed a plea agreement.

Q. When did you sign that?

A. Probably in 1981.

Q. So at that time you didn't know it, did you?

A. No.

Q. But you're telling us you didn't know anything about it, and Wiley Fairchild's talking about raising the ante?

A. Correct.

Q. At a time when a plea agreement signed, sealed and delivered had already been executed?

A. That's correct.

Q. Could you explain to the jury how that would take place? Raising the ante when the deal is already cut, there is no state prosecution, he's not going to do any jail time, what ante is being raised, sir?

A. The ante that he was referring to I don't know.

Q. But you're sure this happened sometime in the fall of 1980 after the plea agreement?

A. Beginning in the fall of 1980. I'm not sure whether it was prior to or after that.

Q. How do you date it?

A. I can't.

Q. It's convenient though, isn't it?

A. I don't understand what you mean by convenient.

Q. I'll tell you what I mean. You linked it to the upping of the acreage from one to three acres, didn't you? You linked it, that's what you told the FBI, didn't you?

A. It's a logical conclusion.

Q. All of your conclusions must be logical, right? You are a rational human being, aren't you?

A. We all like to consider ourselves that.

Q. Some of us are wrong in that regard though, aren't we? Let's go on. You had to figure out a reason why the numbers went from one -- when you initially were told by Wiley to prepare one acre assignments, to three or three, three and five, or three, three and three, I forget which it was?

A. Are you saying when I made the initial change?

Q. When you made the change from one, Wiley's directions, you sent it over to Wiley, you prepared the documents, one acre for Marion, Covington, Mobile, right?

A. Initially I thought nothing of that.

Q. Excuse me. Follow my question, okay? You put down one, one and one. February 25, 1980. Get a note signed, notarized, sent to Carroll Ingram, come back?

A. That's correct.

Q. You don't know anything about the communication between Ingram and Wiley which called for it to be changed, right?

A. That's correct.

Q. But you say this must have something to do with upping the ante on the Drew Fairchild case, right?

A. It was all right about that same time.

Q. This is something you know nothing about, but you're concluding that, right?

A. I am.

Q. I guess it would be fair to say, the one who could tell us about it would be Carroll Ingram, right?

A. He would be helpful.

Q. Helpful. Did you know, even as you sit here, that a year before when the deal had been struck around, by February of 1980, Wiley had told Carroll precisely which wells and the acreage that he was a signing, did you know that?

A. Are you saying that it happened, or are you asking me if I knew?

Q. I'm asking you, sir, as you sit here with the same mind that operated since 1981, whether you knew that a year before that Wiley had told Carroll that he would sell to the judge three acres, the acreage interests of three, three, and five in those three wells, Marion, Covington, and Mobile. Did you know anything about that?

A. I knew of no conversation of that nature ever taking place.

Q. Now, if you assume that that occurred, just hypothetically, okay?

A. Okay.

Q. And Carroll knew that, and when the deeds come across he sees it only said one, one, and one?

MS. LITTLE: Objection. I don't think we should be assuming facts not in evidence.

MR. FAWER: I can ask him a hypothetical.

THE COURT: Let's take a recess. I think you're going too far, Mr. Fawer.

MR. FAWER: Thank you.

(Recess.)

THE COURT: Proceed.

MR. FAWER: Thank you, Your Honor.

BY MR. FAWER:

Q. Let's pick up, Mr. Jarvis, where we left off. Take a look at Page 16. You engage -- I take it at the bottom of Page 16, you engage, you tell the FBI that in fact what the deal was, am I quoting you correctly, as a matter of fact, see the deal with Nixon was to keep it shut down on the federal level to get it, to get the state to handle it. Is that what you told them?

A. That's correct.

Q. Okay. You made an accusation not only that Nixon was bribed, but what he was to do was to have this case shut down on the federal level, steering it to the state, correct?

A. That's correct.

Q. You knew not one whit about judge Nixon's involvement on anything to do with this case on the federal level, did you?

A. No.

Q. You did not know as you sit here, you don't even know now that the agreement reached on the federal level between Porter, Drew's attorney, Drew, and George Phillips, was known by nobody else and that Judge Nixon had nothing to do with that, you didn't know that, right?

A. The agreement they made in the fall of 80?

Q. That's right?

A. To my knowledge I don't know what Judge Nixon knew.

Q. Tell the jury what involvement Judge Nixon had in that?

A. I don't know.

Q. Didn't stop you from making this suggestion, though, did it?

A. No, sir, it did not.

Q. And then it was his -- it was part of his deal to get the state to handle it, right?

A. Right.

Q. Tell the jury -- let me ask a question. Do you know of anything that Judge Nixon had to do with the case being turned over to Bud Holmes?

A. The only thing I could go by were these comments I had, what Wiley Fairchild had indicated to me, and he did not indicate what was to be done, no.

Q. The comments you told us about, you've told us what this is, the supposition that you engaged in in these discussions with the FBI were based on the comments you've described already, right?

A. That's correct.

Q. Okay. Nothing had ever been said about Judge Nixon, keeping it shut down on the federal level, steering it to the state, nothing of that sort, correct?

A. That's correct.

Q. And you had done nothing to determine whether a man who had devoted his life to the federal judicial system should be accused by you? You had done nothing to verify those facts, had you?

A. Nothing to verify what Wiley had indicated to me, no.

Q. So we understand, Wiley had not indicated to you any involvement whatsoever between Judge Nixon and the Drew Fairchild case, am I correct?

A. You're saying there was never any indication --

Q. I'm saying when you made that suggestion to him, you told us he denied it?

A. That's correct.

Q. Are you telling us based on his denial, you assumed the contrary?

A. Based on other conversations I had with him.

Q. You told us you had the conversation about getting this lawsuit before the federal court and to have it before Judge Nixon, right?

A. Correct.

Q. Anything else?

A. Upping the ante conversation.

Q. Upping the ante. Never mentions Nixon, but you make Nixon part of the they, correct?

A. That's correct.

Q. By the way, is it fair to say, would you view Wiley Fairchild -- does he jump to conclusions?

A. Sometimes.

Q. Is he a little bit -- how did he feel about his name being in print, about the name Fairchild being besmirched?

A. Probably, I'm certain he's upset about it.

Q. Have you ever seen him upset with any bad, adverse publicity?

A. Since this has come up he and I have not had contact with each other.

Q. In 82 there was Fairchild's name, Fairchild case back on the active list, Fairchild to be sentenced, Fairchild continued. It was in the papers. You read the paper, didn't you?

A. Yes. What's your question?

Q. My question is, did he indicate he was unhappy, were you ever aware of the fact he was unhappy with the publicity surrounding the Fairchild name?

A. I can't remember any specific instances where we discussed that, no.

Q. Okay. In any event, despite any comment, despite the lack of anything said to link Judge Dixon to having this case handled on a federal or state level, it didn't stop you from alleging it as a matter of fact, that that's what this was all about, correct?

A. That's correct.

Q. And those people at the other end of the phone were just loving it, every minute of it, right?

A. I can't make that assumption.

MS. LITTLE: Objection, Your Honor.

BY MR. FAWER:

Q. They were listening to you as if you were reporting something factually accurate, right?

A. I was reporting what I knew to a federal officer.

Q. And then let us move on. Let me ask you, there is much more, the conversation goes on and a variety of things, you're pointing them in ways in which they can talk to employees or find information out by going to the files of Getty or Union to get information, correct?

A. That's correct.

Q. And there is even some suggestion as to something, that they need to get some documents, they don't know how to get them, you're suggesting perhaps you could get them in some way from the files of Fairchild Construction, correct?

A. That's correct.

Q. Okay. You even say, well, you got rules to abide by but I don't, right?

A. That's correct.

Q. Which means that you can go in illegally and take things, but the government can't?

A. You're assuming that.

Q. Isn't that what you meant?

A. No, sir.

Q. What are the rules you're abiding by they don't have -- that they have to abide by you don't?

A. This entire conversation was an attempt to conceal my identity. At the time I was discussing this, I already had these instruments in my possession.

Q. I understand. That's part of the charade you were engaging in?

MS. LITTLE: Your Honor, may we approach the bench?

THE COURT: Yes, you may.

(At the bench:)

MS. LITTLE: Request the Court to instruct Mr. Fawer to refrain from personal insults.

MR. FAWER: What's the personal insult?

MS. LITTLE: Characterizations of his actions.

MR. FAWER: Is not a charade an accurate --

MS LITTLE: That's your word.

MR. FAWER: Pretending to be somebody he's not.

MS. LITTLE: I would suggest those are your characterization.

MR. FAWER: I do not see where they are inappropriate, Judge. If that's too sensitive, I will refrain from using the phrase, charage.

THE COURT: Rephrase it.

MR. FAWER: Thank you.

(Open court:)

BY MR. FAWER:

Q. Move onto your next conversation which I think takes place a week later, does it not?

A. Yes, sir.

Q. Each one of these conversations in November took place exactly one week apart. Had you decided in advance you would call them a week apart?

A. Not exactly. It was just convenient, Thursday was a good day to call them.

Q. Thursday the 3rd, Thursday the 10th, Thursday the 17th?

A. That's correct.

Q. Let me show you Exhibit 17. That's the transcript of the conversation the following Thursday. It's in that conversation I think at Page 5 where you made the statement I just attributed to you, namely you got rules -- I'm looking in the middle of the page, you got rules to abide by, I don't. I assume I means Skip Jarvis?

A. That's correct.

Q. Okay. And that wouldn't have been in connection with being able to get things legitimately and illegitimately, would it?
A. Not in the term that you're attempting to place it.
Q. You might want to look at the preceding statement by you where you talk about legitimately and illegitimately. Do you recall the conversation?
A. I recall the conversation, yes, sir.
Q. Bottom line is, you were talking about that you could get in there and in some way, you were suggesting, even though you had the documents already in your possession, maybe you could get in there and take them surreptitiously, right?
A. I believe we were talking about obtaining documents from Getty Oil Company. They were talking about going in there, whether they needed a subpoena or going in there as federal officers requesting information. I was explaining to him, if they went in, they could go in and ask for the information.
Q. What were the rules they have to abide by but you don't?
A. I'm assuming that the FBI has procedural rules for obtaining instruments from different entities.
Q. Okay. Then you start telling them in this same, this next discussion, as I understand it you start talking about the mysteriously backdated notes appearing, the three notes, right?
A. That's correct.
Q. Now, you had no knowledge as to when those notes were actually prepared?

A. That's correct.

Q. As you sit here on this stand, you don't know, do you, that Carroll Ingram had prepared those notes the same time in February of 81 that you have testified to the deeds being prepared, you didn't know that, do you?

A. I have no idea when they were prepared.

Q. But it didn't stop you from suggesting that they were prepared long after the fact, correct?

A. They were not presented to our office until long after the fact.

Q. Let me ask you something. I assume since you were in charge of this operation, you knew in February of 81 that some interests that Wiley Fairchild had in these three wells had been assigned to somebody, right?

A. I knew that thtee conveyances had been prepared.

Q. Okay. And you knew therefore, because you said you put them in the drawer to remind you to put it on the records that way, that therefore you had to find out the consideration, correct?

A. The reason I held those was to wait and find out who the grantee was.

Q. In April you now know these deeds were filed in all of the county records, correct?

A. Incorrect. I didn't --

Q. You now know?

A. I now know that, yes.

Q. You hadn't gone to the county records, there was no reason for you to?

A. At that point there was no reason.

Q. Carroll at some point, Ingram calls up to find out when there are going to be any royalty checks, correct?

A. May of 1981.

Q. Okay. He's talking about the checks to Judge Nixon, am I right?

A. He said to the judge, he never said Judge Nixon. You know, we can read between the lines.

Q. What kind of lines do you have to read by? You have copies of the correspondence, Walter Nixon's name all over it, didn't you?

A. Got them in July. The telephone conversation was in May, two months earlier.

Q. Right, two months later, when are the royalty checks going to be made, how are they going to be handled, straight from the company or -- straight from the producing company, Getty, Untion, whoever it was, or are they going to come from Fairchild, right?

A. He wanted to know who to contact with Getty to see about getting the Judge's money started.

Q. Wrote letters to them?

A. No.

Q. Sent copies to you?

A. Getty copied us.

Q. You got copies of Carroll's letters to the company, right?

A. I don't think we got copies of his letters to them; we've got copies of Getty letters to Ingram.

Q. Replying to Ingram?

A. Right.

Q. It's clear that the re, the subject matter is Walter L. Nixon, right on the document; you want to see it?

A. No, I accept that.

Q. You've seen it?

A. Right.

Q. Nobody, Carroll's not hiding it's Walter L. Nixon, right?

A. Right.

Q. Nobody is at that point, right?

Q. So you go to Wiley and say, look, I understand that back in February when you prepared the deeds the grantee was blank. You need to have on our records, we need to know what the consideration is, we need to know who the name is so we know who the royalty goes to, we have our records complete. Did you say anything to him like that?

A. No, sir, I did not.

Q. You instead engaged in your suspicions, right?

A. Based on what I was seeing happening, yes.

Q. What you were seeing happen was the bribing of a federal judge before your very eyes?

A. At that particular point I was seeing the extortion of Wiley Fairchild.

Q. The extortion of Wiley Fairchild by Judge Nixon?

A. Judge Nixon and Carroll Ingram.

Q. So it was Wiley who was being extorted by Judge Nixon and Wiley was then going to attempt to murder you?

A. No, there was several events and changes that took place.

Q. In between. You are simply surrounded with criminality, right?

A. I don't think that's an accurate statement.

Q. We'll see if we can tie it together, okay. In any event, when you had a question raised, did you know that Carroll Ingram had the notes that Judge Nixon had signed back in early 81 in his possession the whole time?

A. I never saw those notes before early 1982.

Q. Before when?

A. Before 1982.

Q. Fine. They are dated February 25, 1980, they were backdated to the same date as the deeds that you prepared, correct?

A. That's correct.

Q. Okay. Throughout 1982 you had phone calls from -- Judge Nixon's office called on occasion?

A. His secretary.

Q. She didn't say -- talking in a whisper?

A. No.

Q. She said can you tell us, the Judge would like to know how much is owed up to date in interest and in principle, correct?

A. That's correct.

Q. And you would call her back, Betty Lou Clark, correct?

A. That's correct.

Q. Correct. You would give her the information, correct?

A. That's correct.

Q. Nobody hiding it was the Judge's secretary calling you, right?

A. No.

Q. As I understand it, on Page 21, you continue with your theme at the top of that page, your second statement, once again there is some discussion that the other cases, the other individuals who had been indicted in the case had gone before Judge Cox, correct?

A. That's correct.

Q. And then the FBI agent Whitespunner says right, and you continue with the theme that you had dropped in his lap the previous week. The idea was to go, to get Nixon, if anything was filed to see that it was steered properly, okay. And that was what the payment was for. That's what you're telling them, right?

A. That's correct.

Q. Again, based on the same information you had, so we don't go over it again?

A. That's correct.

Q. You then include, you make sure you drop Carroll Ingram into this, Carroll is in some way involved because according to you he negotiated this nefarious plot, right?

A. Carroll Ingram was the go between between Wiley and Judge Nixon on this transaction.

Q. Has anyone ever suggested -- by the way, is there anything wrong in Carroll Ingram, an attorney for Wiley and a friend of Judge Nixon, being involved in the negotiations of a sale by Wiley to the Judge?

A. I see nothing wrong with that.

Q. But you suggested that he was in the middle of this bribery, didn't you?

A. At the time that I felt like Mr. Wiley was being extorted for funds, I felt Carroll Ingram was a party to the extortion, yes.

Q. By the way, when you're talking to the FBI, you're no longer viewing Wiley as a victim. Wiley is someone who you could care less about?

A. After our conversation in November of 1982 where he asked to be placed back under Judge Nixon's jurisdiction, I realized he was not being extorted.

Q. He was a victim and you were going to bring this to light.

correct?

A. Up until that conversation I was trying to find a way to protect my employer.

Q. Of course in May, the fact you were fired and the fact that he tried to kill you according to your mind, that had nothing to do with your trying to stick a crime on Wiley Fairchild and the judge, did it?

A. November of 1982 I realized?

Q. 83 is this conversation, sir?

A. Prior to that in November of 82, I realized Wiley was not a victim but a willing participant in this transaction.

Q. Let me understand something. I mean you didn't have any hesitation about putting your name on when the notes were paid off, you sent the notes back to whom?

A. The notes I believe went back to Judge Nixon's office.

Q. Who sent them back?

A. I did.

Q. Who signed that they were paid in full?

A. I attempted to get Billy Riley or Margaret Buckley to sign them. They refused to put their signatures on it, so I signed it and I sent it back.

Q. They just refused because they thought this was a crime and they didn't want to be a part of it?

A. That's correct, sir.

Q. In any event you sent the notes back to him. Did you hide the fact that you were putting your writing on these notes?

A. No, sir, I wrote my name in big letters on it.

Q. How did you send it back to him?

A. I'm not sure. I just assume in the mail.

Q. Mail. Okay. You take it because he had paid both the interest, excuse me, both the principal and the interest on the three notes?

A. That's correct.

Q. Okay. Let me ask you something: You indicated at page 24, if I understand it right, that in some way these notes, and I'm looking at three quarters of the way down the page that they mysteriously appear and all of a sudden we are starting to catch up on our back payments that we are behind on. You see that?

A. Yes, sir.

Q. Well, I take it, what you're saying is that the notes were created after the fact?

A. That's correct.

Q. And that, because to allay your suspicions they're now making these payments. Correct?

A. That's correct.

Q. Well, did you ever read these notes?

A. Yes, sir.

Q. There's no payment schedule on them, is there?

A. No, sir, there is not.

Q. It's a three year note due and payable February 25, 1983, there's no payment schedule, there's no back payments due. You want to read them again?

A. No, I don't need to.

Q. So what are you talking about, what back payments?

A. The payments from February of 82 back to February of 1980.

Q. Excuse me. You're saying the notes mysteriously appear and all of a sudden we are starting to catch up on our back payments that we are behind on. Now let's talk about your language. You weren't behind on anything, because the notes, both principal and interest, were due, according to the term of the notes, at the end of the three year period, namely February 25, 83. Am I correct?

A. That's correct.

Q. Judge Nixon, beginning in March of 82, chose to make payments on those notes. Correct?

A. Yes, sir, I believe the first payments were in March of 82.

Q. March 16 of 82. Correct?

A. I believe that's the proper dates.

Q. Betty Lou Clark, his secretary, called to find out how much, how much was due in interest, if they wanted to make a payment of both principal and interest by that date?

A. That's correct.

Q. So that she would know when they sent you a check, how much would be interest and how much for their own records would be principal. Correct?

A. Correct.

Q. They chose to make payments, having no obligation to do so until the early 83. Correct?

A. That would be correct.

Q. But you chose to read that as that you're suddenly starting to catch up on back payments. Tell the jury what back payments?

A. I'm saying that in February, it would be January or February of 82, I confront Wiley, then these notes show up at the office and, all of a sudden, the judge is making payment on these notes.

Q. Let's understand something. The notes were in payment of the royalty assignments. Right?

A. There's nothing on that note to indicate what they were for.

Q. You don't really have any doubt that these notes were for the three assign minutes, do you?

A. There are three notes payable to W. R. Fairchild Construction Company, one of the grantees had been Fairchild Windham.

Q. Sir, are you telling me the notes, they just introduced the three notes through you, the three notes totaling 95 hundred are in payment of the three assignments, aren't they?

A. That's what I was told.

Q. Okay. How the royalty payments start coming in in early 82. Right.

A. That's correct.

Q. The royalty money comes to Judge Nixon, he can wait until February of 83 to make the payments, if he chooses to?

A. That's correct.

Q. Instead some money is coming in, he operates to take a portion of it and pay down the notes. Right?

A. I'm not sure what was in the judges mind. He made payments, yes.

Q. It's fair to say the payments came shortly after he received some royalty checks?

A. That's correct.

Q. You know that's the fact. Right?

A. That's what I just said, yes, that's correct.

Q. So what is mysterious about that, if someone has money available from the very investment that he has financed, what's mysterious about making payments on it?

A. What's mysterious on making payments on it was the conveyance was made with apparently no payment, no notes, no nothing, for a year. I confront Wiley, the notes show up and all of a sudden, (snaps fingers), we are making payments on the notes.

Q. The notes were not prepared by you. Correct?

A. That's correct.

Q. These notes, do you know they were prepared by Carroll Ingram?

A. I have no idea who prepared them.

Q. But if Carroll Ingram prepared them at the same time you prepared the deeds is there any validity changed that Carroll Ingram held them in his possession until he sent them over to you?

A. We normally did not convey things and then wait to receive our payments on them.

Q. As I say, assuming with all the human frailty that some of us have, Ingram kept the notes in his file instead of sending them over to you, he had the Judge's signature on them, are they still valid notes if they're sitting Ingram's files instead of yours?

A. They would still be valid, yes.

Q. If that occurred, there's nothing, there's no mysterious notes appearing, they're just notes not in your file but in Ingram's file. Right?

A. I have no idea where they were prior to their being in my file.

Q. Let me ask you this: The Judge's signature were on those notes, right?

A. Yes, sir.

Q. Are you aware of when those notes were signed by him?

A. No, sir.

Q. Do you have any awareness of who brought the notes to the Judge to sign?

A. No.

Q. Do you have any awareness when he got the deeds?

A. The conveyance I prepared?

Q. Yes.

A. I have no idea.

Q. Do you have any awareness the notes and the deed were delivered to him on the same date?

A. I have no idea.

Q. You don't have any knowledge that Carroll Ingram prepared the notes and delivered them to the Judge?

A. I have no knowledge.

Q. You have no awareness, but you can make allegations and are drawing conclusions. Right?

A. That's correct.

Q. As I understand it, in February of 1984, is that when you allow yourself to surface?

A. (No response.)

Q. What I mean by surface --

A. You mean face-to-face meeting with the federal people?

Q. Face-to-face.

A. Yes.

Q. How did that come about?

A. I had had some telephone conversations with Special Agent Whitespunner and he indicated to me at some point it would be necessary because of my knowledge of the transactions to come forward. I, up until this point, had been very hesitant because of the lack of trust of the local federal officers, and he indicated to me that the folks were coming out of Washington that had no involvement locally based on the fact that there were people coming in who were not related to the people here in South Mississippi, I agreed to come forward.

Q. You what? I didn't hear what you said. You what?

A. Based upon the fact there were parties not associated with the offices here in South Mississippi that were coming in, I agreed to meet with those parties.

Q. Okay. This was in February of 1984?

A. That's correct.

Q. Okay. So what you're having is the November 3 conversation, the 10 and the 17, in November?

A. That's correct.

Q. And then there's a serious gap, nothing, you don't contact them and they don't understand why you haven't contacted them, but you don't?

A. That's correct.

Q. Any reason for that?

A. Yes, sir.

Q. What?

A. Two things, Bill Porter disappeared and Robert Watkins, the pilot, supposedly, disappeared.

Q. Wait a minute, let me understand something. You are you a little frivolous with dates, aren't you?

A. You asked me why there was a gap between November and February I'm telling you why, about this time period is when those two parties, during this period of time, and I'm telling you why I chose just to back away from this thing.

Q. Well, you called them first on the third of November. Right?

A. That's correct.

Q. And then you called them on the tenth. Right?

A. That's correct.

Q. You called them on the 17?

A. That's correct.

Q. When did Porter die?

A. I don't know.

Q. November 4. Now tell your story.

A. I'm not telling a story I'm telling --

Q. You told us it was because of the death of Porter that you had this gap?

A. That --

Q. The death of Porter was reported almost instantaneously in the community. Right?

A. Yes.

Q. It happened the day after your first phone call. Okay?

A. Okay.

Q. You doubt my date?

A. I will accept your date.

Q. You called, six days later, you're on the phone. Correct?

A. Correct.

Q. Seven days later you're on the phone again?

A. Correct.

Q. So it couldn't have been the death of Porter?

A. That, combined with Robert Watkins' failure to appear over here, I had no idea where Robert Watkins was or whether he might have been in the same place Bill Porter was.

Q. Robert Watkins was the fugitive, the pilot in the bust who had twice jumped bond. Right?

A. That's correct.

Q. He was supposed to go to trial down on the coast in the early part of December 1983. Correct?

A. I believe so, I'm not sure of that.

Q. And he doesn't show up. Correct?

A. That's correct.

Q. And you're saying that because of that, that frightens you?

A. That scared the hell out of me.

Q. Watkins, this is the second time, third time he hasn't shown up. Right?

A. That's correct.

Q. Didn't scare you any other time but now it's frightening you?

A. The particular sequence of events up until that, the other times he didn't appear, I had not been dealing with federal officers.

Q. What was the -- Tell us what it is that the Watkins jumping of bond in December of 83, just that he had jumped it in Florida and jumped it in Texas, how did that tie in to Porter, you know, dying in a plane crash down by the gulf?

A. Because you're calling it jumping bond. All I knew was Robert Watkins was not in court when he was supposed to be. I had no idea where Robert Watkins was at that time.

Q. You didn't have any idea where he was the two years before that when he jumped?

A. I had no reason to worry about it at that time.

who they might make a case on. Right?

A. I wouldn't word it that way, but I was giving them information as to who they might take a look at.

Q. You were acting as an anonymous confidential informant?

A. Probably that would be a fair, accurate statement.

Q. Did this whole thing excite you?

A. It scared me to death.

Q. It excite you?

A. It scared me to death.

Q. There was no excitement aside from fear?

A. I was extremely nervous through every one of these phone calls.

Q. When you say nervous we could play the tape and hear your nervousness coming through?

A. Not necessarily. I'm nervous right now.

Q. You joked during these phone calls?

A. It's my way of relieving tension.

Q. You range from humor to speculation, you were running the show in these calls, the man at the other end was simply trying to pick your brain and you're taking him anywhere he wanted to go -- anywhere you wanted to go?

A. That would be a fair statement, I would say.

Q. Page five, it looks like at this point February was Carroll Ingram's turn. You want to do a number on him. Right?

A. I don't want told a number on anybody.

Q. Well, but you do a number on him, don't you?

A. I don't wish to do a number on anyone, sir.

Q. We'll come to that. You describe, you ascribe to Carroll Ingram on that page or in that portion of the conversation, that he's the one who came up in the backdating and the reason for the backdating was because of the Drew Fairchild case. Am I correct?

A. That was my assumption at that time, yes, sir.

Q. Okay. So you ascribed to an attorney, and a former member of the legislature, with an absolutely impeccable record and reputation, a felony under federal law. Correct?

A. Correct.

Q. Okay. So, as I say, February was Carroll's month. You were, without any further knowledge, you accused him to the FBI of having committed a crime?

A. I believe that was also referred to in prior conversations, too, sir.

Q. That's right. But you went back to Ingram. You see it capitalize had, Ingram sent it back and said, wait a minute, you know, this is right here at this time when all this is going on. What you meant by all this, you meant the Drew Fairchild case. Correct?

A. That's right.

Q. So we need to backdate it?

A. That's correct.

Q. He sent it back to Fairchild, from what I understand and they stuck it in the files. Right?

A. Correct.

Q. Then Fairchild had him redo it and backdate it so they would show they had done all this a year prior?

A. That's correct.

Q. Am I quoting you correctly?

A. That's correct.

Q. When you are saying, you're making these accusations you're some nervous?

A. That's right. That's correct.

Q. Some scared?

A. That's correct.

Q. You're not excited to make this, it kills you to make all this about your former employer, right, really troubles you, right?

A. It troubles me to see corruption in the federal system, sir.

Q. I understand that. But does it trouble you? You're accusing Wiley Fairchild of a crime, you're related by marriage, he put you through school, you were troubled about putting this man of a --

A. I was calling it the way I saw it.

Q. Were you troubled?

A. I would have to say in making these statements, no.

Q. Good. And I take it of course it didn't trouble you that you would blithely ruin the career of the man sitting here at this table, did it?

A. I was concerned about corruption in the federal system, sir.

Q. I know you are. I mean you are the epitome of the outraged citizen, aren't you?

MS. LITTLE: Objection, Your Honor.

THE COURT: Objection. It may be stricken.

BY MR. FAWER:

Q. And you had no compunction about making allegations against Carroll Ingram as well. Is that correct?

A. I had no hesitation whatsoever.

Q. Fine. Carroll was in, I mean you made that allegation but that didn't satisfy you, you went on to accuse Carroll of recently putting the squeeze on Wiley for more money. Right?

MS. LITTLE: Objection. Mr. Fawer is characterizing how Mr. Jarvis felt about this.

MR. FAWER: Excuse me, I'm quoting Mr. Jarvis, would you like the page reference?

BY MR. FAWER:

Q. Let's go to page -- Just bear with me one moment, page eight, so that Ms. Little is not upset by my characterization, why don't you read what you said, using only the words you used, first quote, by you on that page?

A. Beginning okay?

A. Beginning okay.

Q. Okay?

A. Oh, but from what I understand from some of the folks that work out there that Ingram put a squeeze on Fairchild recently for more money.

Q. Your language?

A. My language, yes.

Q. Okay. I didn't suggest it, at least, you said it, right?

A. Yes.

Q. You're comfortable with my using that language?

A. That's exactly what I said.

Q. I take it what you were saying recently -- by the way, I take it you could have no information first hand because you hadn't been near that place since May of 83, right?

A. That's correct.

Q. The last time you had been there was when you drove off on your death ride, right?

A. I don't care for that characterization.

Q. I'm not interested in if you care for it. That's the ride which you thought, some one had sent you to your death?

A. Let my answer your question. The last time that I was there was probably the latter part of May, 1983?

Q. Fine, that's what I just said. So the period of time you're talking about in which Carroll Ingram was squeezing his client Fairchild was from what, around Christmas of 83?

A. That's correct.

Q. And how was he squeezing him for money?

A. The Fairchild case, I believe if you read on through here, it indicates that this information came to me through other parties.

Q. Hearsay has never stopped Skip Jarvis, right? Believe me. You know what hearsay is?

A. I know exactly.

Q. It has never stopped you from taking it and calling it a fact, no matter what the source is, right?

A. I think you're overcharacterizing it.

Q. Not by much, am I, Mr. Jarvis? Christmas 83, tell me what you said to the FBI happened?

A. Without going through the transcript, I believe what I said was Carroll Ingram was requesting more money.

Q. Put the squeeze on, use your language?

A. Put the squeeze on him because the case was becoming more and more complicated to handle, Carroll wanted more money for it.

Q. Let's think about it. We do have some objective facts to deal with, am I right? I mean once in a while we have to deal with the real world, don't we?

MS. LITTLE: Objection, Your Honor.

BY MR. FAWER:

Q. In December of 83?

THE COURT: What's your objection?

MR. FAWER: Excuse me.

MS. LITTLE: These continued editorial comments I don't think are appropriate.

THE COURT: Mr. Fawer, you have a tendency to put words in the witness's mouth. In your words, not his words.

MR. FAWER: He can always reject them.

THE COURT: Yes.

MR. FAWER: I apologize to the Court if I have at any time done that.

BY MR. FAWER:

Q. Mr. Jarvis, I will try to use your language, that's why, instead of saying asked for more money, your language is squeezing, correct?

A. That's correct.

Q. Let's come back, what you're saying, so we can cut through all this, you're telling the FBI, Carroll put the squeeze, put the arm on Wiley for more money so you understand in the end of 1983, right?

A. Correct.

Q. And at that time, that point in time Drew Fairchild had already pled guilty, almost two years ago in, the state court, right?

A. That's correct.

Q. Had a deal which would have given him no jail time, right?

A. I'm not sure what the deal was.

Q. You didn't even know anything about that?

A. As far as the state court case went?

Q. Right.

A. Went and pulled the file and saw it was passed to files.

Q. We all know about it being passed to the file. Have you ever handled a criminal case?

A. Yes, sir.

Q. Here I mean?

A. Not in Hattiesburg, no.

Q. Do you know what passing to the files means?

A. Yes.

Q. What's does it mean?

A. Mean in the files, more or less put on hold.

Q. Put on hold. Does a judge have the right to bring the the case back?

A. Judge can issue an order the reactivate the case.

Q. DA can ask it be done?

A. Yes.

Q. Was it done in this case?

A. Depends on whether you want me to go into, it was a different DA in office when it was brought back from the files.

Q. I'd like for you to? You obviously know something about the facts.

A. It's my understanding that Judge Weldy was the one who signed the order passing to it to file when Bud Holmes was District Attorney, it was subsequently brought back while Glenn White was District Attorney by Judge McKenzie.

Q. I see. And you checked the file?

A. Yes, sir.

Q. Okay. Let's have the order, the exhibit in which it was passed to the files, and the one bringing it back? Numbers, please? Defense 7; what's the one sending it to the file? Government Exhibit I think on the other. Do you know the number? Government 4.

BY MR. FAWER:

Q. I take it what you just testified to under oath of course came as a result of you checking the file at some point?

A. I went and looked in the file, yes, sir. I don't claim to be an expert on that file, I did look in it.

Q. I understand that, but I take it at the very least you would understand the English language and what it says on here?

A. That's a fair assumption.

Q. Let me show you what's Government's Exhibit 4. That's the order passing it to the files, as you say, signed by Judge Weldy, December 23rd, on the motion of Bud Holmes. Okay?

A. Okay.

Q. And let me show you what is I guess the other document you saw was the motion and order bringing it out, right?

A. I don't remember specific instruments. May I see this?

Q. Oh, sure.

A. Yes, sir, I don't remember the specific instruments themselves. I just remember the path through the file.

Q. There is the file, you know. We just stopped, right. Do you want the whole file or is that enough?

A. That's enough.

Q. You're wrong, aren't you, for a change? I withdraw that. Bud Holmes was the districts attorney when it went to the files, he was the district attorney when it came back from the files, correct? There are 33 days separating the two events, correct?

A. That is correct.

Q. So what you were telling us before about another DA that you really -- Holmes had passed it to the files, it took another DA to bring it back, where did you get that from?

A. I'm incorrect in that point, sir.

Q. But you drew certain assumptions based on it, correct? Am I correct, sir?

A. I'm not sure where you're going with this thing.

Q. Well, let's see where we're going. I want to follow your logic. You saw something passed to the files by Bud Holmes and told us --

A. Saw something ordered by Jack Weldy.

Q. On the motion of Bud Holmes?

A. Okay.

Q. Right. Bud Holmes, DA, motion to pass to the files, right?

A. Correct.

Q. Weldy signed off of, right?

A. Correct.

Q. One month later, I mean -- excuse me, you told us it doesn't come back until a new DA comes in, and in effect, acts, I assume, propriety demands he bring it back from the files, right?

A. Yes, sir, I was incorrect. I was correct on the judge that signed the order; I was incorrect on the district attorney in office at that time.

Q. But the point is that you made certain assumptions that Bud Holmes wouldn't bring it back, it took another district attorney to do it?

A. No, sir, you were saying that assumption was made. I made no assumption on this record.

Q. What was the point of telling us about it being another DA?

A. I don't know what your point is in asking this.

Q. You were the one who said it, I didn't, sir. Let's pass on to the next. We got this, thought, you're satisfied you were in error, minor errors, but in any event, Bud Holmes brought it back thirty days after it was committed to the files, correct?

A. Correct.

Q. Which as you've told us already is nothing more than putting it on hold status, right?

A. Correct.

Q. You knew, if you look through the files, there had been continuance after continuance of the sentencing of Drew, right?

A. Correct.

Q. Putting it on the inactive status simply made it, didn't have to go into court all the time for these continuances, correct?

A. Right.

Q. You're a prosecutor now?

A. I am.

Q. Where is it, down in Florida?

A. It is.

Q. You make plea bargains, don't you?

A. Yes, I do.

Q. When you make plea bargains, one half of the deal is the person is going to testify against a co-defendant, you hold back the sentencing until you get his testimony, right?

A. You try to, yes, sir.

Q. You try to because you've got to be crazy not to, right? Tell them why?

A. As far as your leverage to get the witness to testify.

Q. Your word. Without that, you got no leverage, right?

A. Correct.

Q. Absolutely routine to hold off on the sentencing until you get what the man has promised, namely his testimony, right?

A. Correct.

Q. Okay. And you knew that the whole, what was going on in the state court was waiting for Watkins to be brought to trial so Drew could testify against him, right?

A. That's what I read in the papers.

Q. Couldn't get Drew back here so it's passed to the files until they have Drew back here, right. Excuse me --

A. Watkins back here.

Q. Watkins back here. The day they got Watkins here they -- Bud Holmes brought it back to the docket?

A. I don't know what date Robert Watkins was brought back here.

Q. Why don't you look at the document. You read it you say?

A. I don't know.

Q. Do you know he appeared in court, a was arraigned on the very day, January 26, 1983?

A. I have no knowledge of the Robert Watkins' case.

Q. I thought you said you looked at the file?

A. I did. In reference to Drew Fairchild.

Q. Same case, isn't it?

A. Yes, sir.

Q. You just didn't pay any attention to the Watkins phase of it?

A. I really didn't go into it that deeply.

Q. When you read the order reinstating it, did you notice the reason it was reinstated?

A. I already told you I was not familiar with the specifics of this order and I did not sit here and read the whole order.

Q. Excuse me?

A. Did not read them a minute ago.

Q. Let's get back to where we started unraveling this. It was your allegation in December 83 when, at some, December, 83, Watkins has skipped again, right?

A. I was under that, I had that understanding.

Q. So by Christmas, Watkins is gone, nothing is happening to Drew's case, he's still awaiting sentence until he could be -- testifies against Watkins, you're saying Carroll is putting the screws on him because the case is getting more complex?

A. That was told to me that Wiley had stated that.

Q. Okay. Did you try to figure out in your own mind what the facts really were?

A. I made no investigation by contacting Wiley, no, sir.

Q. But you had no problem making the allegation to the FBI?

A. The FBI could go and ask Wiley about it.

Q. I understand. They ultimately did?

A. Yes, sir.

Q. Okay. And we'll come to that. It is not until the next month, am I correct, that you actually surface, in March?

A. No, I believe it was February of 84.

Q. Well, is it fair to say you have seen an interview, a report of the interview of you when you surfaced, right?

A. No, I have not seen that.

Q. You haven't seen it. Your chance is about to come.

A. If I have seen it I don't remember having seen it.

Q. You've been shown your various statements?

A. Most of them, yes, sir.

Q. Excuse me?

A. Most of them. I'm not sure if I've been shown all of them.

Q. Let me show you Defendant's Exhibit 13, see if it helps your recollection?

A. Yes, sir, I have seen this. However, this is a synopsis of the entire train of contact and things. There are several things in here I have already mentioned to the Justice Department that are inaccurate.

Q. I didn't ask you about that. I was trying to get a date when you surfaced?

A. Fairly sure it was February of 84.

Q. How were, were you going to be brought together with some people from the Justice Department, Whitespunner implored you to please come forward and identify yourself? I mean what happened? How did your fear disappear? How did the Watkins disappearance and the Porter disappearance -- you suddenly no longer worried about that, tell us about it?

A. At no point ceased worrying about it, Mr. Fawer. At this point I was told by Mr. Whitespunner there would be federal people from Washington in Jackson that were interested in meeting with me. During the telephone conversation where we discussed it, I just took the position, well, it's got to be done at some point, I have got to come forward. Since the people are going to be in Jackson, I told them I would meet with them. However, I would pick the place and the time.

Q. Okay. And you picked it?

A. I did.

Q. Where was this place and time?

A. I picked, it was the, the date I'm not certain as to what date it was. It was in the law library at Mississippi College School of Law in Jackson.

Q. Some innocuous outside place?

A. Some very public place.

Q. Public place so -- why public?

A. Because I didn't know who was going to walk in that door.

Q. I mean were you somewhat worried that the person who would walk in the door might be armed or do you physical violence?

A. I had no earthly idea.

Q. What is it that you were troubled about?

A. I was troubled about giving information to any federal officer about a federal judge.

Q. You had been doing that -- you had been giving information, correct?

A. Anonymously.

Q. Anonymously. You didn't know that this federal judge, his name was spread on the record in courthouses of Marion, Covington and Mobile County, right?

A. I knew his name was on the conveyances.

Q. On the conveyances. His name is on correspondence in Getty, Union, and who is the third, Exxon?

A. Exxon.

Q. Am I right?

A. Correct.

Q. Carroll Ingram told you, talked to you about the delivery, excuse me, about the arranging for the payments of any royalties that are coming, correct?

A. In May of 81, yes, sir.

Q. Betty Lou Clark, his secretary, is calling you on the phone asking for the breakdown of interest and principle, right?

A. Yes, sir.

Q. Nobody is hiding anything, right?

A. At this point, no.

Q. A guy name Porter died in a plane crash, correct?

A. Correct.

Q. We had a tragic accident yesterday. Is there anything about that yesterday that you ascribe any criminality to, or does that make you fearful of anything?

A. No, Mr. Faver, it does not.

Q: But Porter's death did and Watkins' disappearance did, so you're meeting these people who you know you're talking to from the FBI, correct?

A. Yes, that's correct.

Q. You're meeting them in some public place, debriefing you, taking notes, listening to what you have to say, right?

A. That's correct.

Q. You tell them about this -- by by the way, you know what an FBI 302 is?

A. No, sir.

Q. The document I have in front of me, named a 302. Just what's it's called.

A. Exhibit 13?

Q. Right, look at the upper left hand corner, they have a staple in it, see where it says federal form 302? Sorry. This one has it on the second page, maybe yours didn't come through.

A. Yes, it is here. I'm sorry.

Q. Not a big deal. That's why it's called a 302. In any event, they indicate, do they not, this all took place on March 12 of 1984, right?

A. They also indicate I went to work for Fairchild on October 20th, which is incorrect. I'm saying that there are certain inaccuracies in this. I cannot say this is the way it happened.

Q. I understand that. We're not going to go question by question. I'm not going to accuse you of making a misrepresentation. They could have made a mistake, you went to work I guess in August of 79, not October, right?

A. Right.

Q. Somebody made a mistake. It wasn't taped, right, as far as you know?

A. As far as I know it wasn't.

Q. Did they ask to tape the meeting?

A. No one requested.

Q. Who was present?

A. Gentleman named Bob Richter, Reid Weingarten, and Ken Whitespunner.

Q. Gentleman over here, Richter from Washington, associate, boss to Reid, and Ken Whitespunner who you've been talking to since November, correct?

A. That's correct.

Q. Basically you went, you disgorged all of these suspicions and speculations, et cetera, fair to say?

A. I just told them what I believe had transpired to see if they were interested in pursuing it.

Q. Okay. Interested? They came down from Washington to talk to you, right?

A. Agent Whitespunner indicated they were going to be here anyway.

Q. They had been trying to get you to meet with them throughout those other phone calls?

A. They had no indication I was going to call the day before this meeting in February.

Q. This day in February?

A. I am fairly certain that the meeting was in February. I may be incorrect on that. I want to say to the best of my recollection the meeting was in February.

MR. WEINGARTEN: Mr. Fawer, may I see you one minute to clarify something?

(Off record discussion between Mr. Fawer and Mr. Weingarten.)

BY MR. FAWER:

Q. To clarify, I take it what happened is you met with Reid Weingarten and Richter, then they turned you over to the FBI for the debriefing, right?

A. Not at that date. The three of us met and we separated and then on subsequent occasions I had dealt with FBI after that.

Q. Whatever it may be, you then gave all this information, and in fact you told them that what made you suspicious of this whole thing, oddly enough, was when Carroll Ingram called you and very openly discussed when are the checks going to come for the judge on these assignments, right?

A. That's the first indication I had as to who the grantee was and I really didn't know anything other than the judge.

Q. I don't want to go back over but that's what made you suspicious and that's what you told the FBI. Correct?

A. That's correct.

Q. And then, there's an interesting part I wanted to ask you about. YOu know Carroll is freely discussing with you Judge Nixon. Right?

A. That's correct.

Q. YOu know that his name is spread on the record and there's the need for preparing the division order. Right?

A. I know that there were three deeds that were prepared with a blank grantee. As far as his name being spread on the record, I didn't know any such thing.

Q. In 82 you knew it?

A. But you're talking about a May of 81 telephone call. What I knew in 82 was irrelevant at that point.

Q. When did you prepare the division orders?

A. The division orders were prepared in January of 82.

Q. You knew of Walter Nixon at that time?

A. I knew they'd been conveyed to Judge Nixon at that time.

Q. No questions in your mind?

A. No question in my mind.

Q. But you're suspicious, you were conjuring up this whole bribe thing in January of 82, right?

A. No, sir. In January of 32, I thought they were extorting money from Wiley Fairchild.

Q. Excuse me. An extortion and of course Judge Nixon was right in the middle of this plot?

A. Based on what Mr. Fairchild said in my presence that was what I believed was going on.

Q. Again what you said Fairchild said in your presence, it was a categorical denial of there being any such wrongdoing?

A. After the division orders were prepared.

Q. The denial came after?

A. Yes, sir.

Q. So before came what?

A. Before came the conversation where Wiley said that they wanted more but they didn't know how to deal with him.

Q. And they had to do with Nixon although he never mentions Nixon's name?

A. I had no idea at that point who they was.

Q. So you're going to and, as I see it, you're going to create in your words a paper trail to catch the Judge. Right?

A. I didn't know if this was just going to go to Carroll Ingram, whether they were going to use the Judge's name or whether the Judge's name was going to be used, I had never met the Judge.

Q. But you're going to find out?

A. Yes, sir.

Q. We are getting involved in a little Dick Tracy kind of a scene at this point?

A. I was trying to create a file to protect my employer at this point.

Q. So what you got to do, you got to prepare a division order. First tell the jury what a division order is.

A. The division order is an instrument where the owners sign the orders, where their specific division of a well is such and such.

Q. Each of them that has a certain royalty interest. Right?

A. Working interest and royalty interest both would be involved in a division order.

Q. To digress just a minute a royalty interest is usually one eighth?

A. The statutory interest is one eighth but a roylaty could be any percentage you wanted it to be.

Q. This was one eighth. Right?

A. I'm not sure what the -- Now you're talking about on a lease. I was told to convey specific acreages of royalty --

Q. Did you figure out the ratios when you prepared the documents? You want me to take you through the documents?

A. No, but you're confusing apples and oranges here.

Q. You're ending up with a conveyance to Judge Nixon in each one of these wells of something like five ten thousandths of an interest. Right?

A. Right.

Q. Was that based on one eighth?

A. No, sir. That was based on three royalty acres to the total number of royalty acres in the whole unit.

Q. Times what?

A. Times nothing.

Q. You have to times it by something to get it?

A. No, sir. You take the number of royalty acres in the entire unit, you put above that your three royalty acres and that --

Q. The 640, that's approximately the amount, right?

A. Depends on which well we are talking about.

Q. Any one of them divided by three, what are you going to get?

A. You're going to get an incorrect answer.

Q. You tell me the correct answer.

A. To get a royalty you figure there are eight royalty acres in each mineral acre, so to get the proper number, take the total number of surface acres, multiply it by eight to get the total number of royalty acres in the unit and then you compare that figure to the three and that's how you come up with.

Q. You're sure you don't divide it by three into and multiply it by 13 point 20?

A. You can't take three and divide it by one eighth.

Q. We'll deal with the course in mathematics a little later.

In any event, you are the one who calculated the five ten thousandths? That was yours, that was on the division orders?

A. I calculated the interest on the division orders.

Q. You came up with this great way to catch Judge Nixon. Right?

A. No. No, I came up with a way to show whether Judge Nixon himself or someone in his name had prepared the --

Q. You prepared the division orders?

A. That's correct.

Q. You turned them over to Carroll?

A. That's correct.

Q. Carroll turned them over to Judge Nixon?

A. I did not have any knowledge of that.

Q. So the jury will understand it, you put the wrong middle initial for Judge Nixon?

A. That's correct.

Q. Instead of Walter L. Nixon, you put Walter O. Nixon on all three?

A. That's correct.

Q. Thinking if he was involved, he would change it and that way you would know it. Right?

A. That was to show whether or not Walter L. Nixon ever looked at this instrument.

Q. Of course it never dawned on you Walter L. Nixon -- By the way let me ask you something. If your signature was going on the purchase of a house -- Have you ever bought a house?

A. Yes.

Q. If somebody prepared the document in a lawyer's office, -- What's your middle name?

A. Louis.

Q. That's an L. Correct?

A. Right.

Q. What if it said Robert P. Jarvis and you had to sign it, would you correct the P to an L?

A. I would.

Q. Would you ascribe any criminality to your conduct?

A. That was not my intent when I changed the middle initial.

Q. I asked you a question. Can you answer it?

A. No.

Q. So Carroll sends the deeds down to Judge Nixon, he obviously sees the incorrect middle initial, crosses out the C, puts the L above it?

A. I think he put the L right on top of the O.

Q. That's okay. He makes the correction, signs his name, Walter L. Nixon, and sends them right back to you. Correct?

A. Correct.

Q. And that was your way of proving that the Judge really kne this and he was therefore personally knowledgeable of this extortion plot?

A. That was my way of knowing that Walter Nixon had seen and had in fact signed these division orders.

Q. Of course two months later you didn't need that proof, Betty Lou Clark is calling you on the phone and asking you how much do we owe in terms of principal and interest. Correct?

A. That's true.

Q. Carroll Ingram is talking about Walter Nixon all over the place?

A. Not to me.

Q. He was talking about the Judge?

A. He was talking about the Judge back in May of 81.

Q. Excuse me, May of 81. By January of 82 you know it's Judge Nixon?

A. That's correct.

Q. Let me ask you something, since I have a feeling if Carroll Ingram mentioned the Judge in May of 81, who did you think the Judge was?

A. Based on something that someone else told me, I assumed it to be Judge Nixon.

Q. So in May of 81, you pretty well knew it was Judge Nixon?

A. Margaret Buckley told me there had been a meeting with Judge Nixon in Wiley's office.

Q. Okay.

A. At that point, that was approximately a month or two prior to Carroll Ingram calling me in May.

Q. So here's Margaret telling you the Judge's had been with

Carroll Ingram at Wiley's office. Correct?

A. That's correct.

Q. By the way, you didn't know anything about it. Right?

A. I knew nothing of that meeting other than what Margaret told me.

Q. Margaret is somebody who works in the office?

A. That's correct.

Q. Nobody spirited him, I mean Margaret saw him go into Wiley's office, right, with Carroll?

A. That's correct.

Q. Did it strike you, did your mind ever say to it itself, it sounds pretty above-board to me? You never said that, did you?

A. I never really placed any significance on that point.

Q. I know that. Okay. From what I understand, though, at some point the division orders are back, there's Nixon's name all over the place and, as I appreciate it, as I appreciate it, you were fearful at this point because you were looking out for your employer's welfare, you were fearful he was doing some things that were so obvious that would get him into trouble?

A. That was the discussions I had with Billy Riley and Margaret Buckley. All three of us were worried about it.

Q. You were going to bring to his attention, to Wiley, Wiley, you really should be more careful and you ought to think twice before you do this?

A. Both Billy and I discussed this and thought that would be the best thing to do.

Q. Listen to my question. I didn't ask you about your discussions with a third party. I'm asking about your state of mind and what you said. Okay?

A. Okay.

Q. Zero in on those questions. If you have a problem, tell me.

A. Okay.

Q. So what did you do? You put on your three piece blue suit?

A. That's correct.

Q. I'm curious about something. What is it, why did you go out of your way to tell, you wanted to make an impression on Wiley Fairchild. Now I picked this up from what you said to the FBI, I'm not trying to, when I said the three piece blue suit, you indicated that in order to get Wiley's attention, you were going to go in in a certain kind of assertive way with your three piece Sunday go to church suit and be very assertive as if you knew what you're talking about. Did I get the right impression?

A. I don't think that was necessary to get Wiley's attention, no. I wanted to feel like, I wanted to feel confident and in control when I went in to have this conversation because I knew it was going to be a very touchy conversation.

Q. Turn to page 19 because I don't want to misread anything, I really don't. I say page 19, it says 19 at the top but 20 at the bottom?

A. Okay.

Q. You see that large paragraph?

A. (No response.)

Q. See it?

A. Yes, sir.

Q. You have read this over before. Right?

A. Yes.

Q. This isn't anything as I recall that you found a need to correct. Am I right?

A. There are things in here that are inaccurate as I first stated when you --

Q. In that paragraph. I have your notes. I don't see any corrections.

A. There were no corrections.

Q. Thank you.

A. Because I had not seen it prior to my coming up here for this trial.

Q. I beg your pardon? You want to see your notes?

A. I don't remember having seen this particular instrument.

Q. I think we better mark this document?

A. Go ahead. Do whatever you want.

Q. Here's a series of notes that I understand you went over each one of the recorded conversations. Correct?

A. Correct.

Q. And you went over each of the interviews, the 302's?

A. Correct.

Q. You dated it so we could look at the page and the number and be sure we could go from one on the another. Right?

A. That's what I was requested to do.

Q. We understand. And the FBI requested and you did it. Right?

A. Right.

Q. Here we are on the interview of March. See it?

A. March 19, yes, sir.

Q. Do you see anything on 19 or 20?

A. I see a interview of March 14, 1984 and I'm looking at a March 19 interview.

Q. Let me explain something. You got all your dates wrong. You looked at the wrong dating on the exhibits. You want me to show you or do you want to simply save some time?

A. Let's save some time and go on with the question.

Q. So no change on that paragraph. Right?

A. I don't see there's anything really necessary to change in here.

Q. Good. Good. I take it since you reviewed it, you basically agree they caught the sense of what you're saying pretty accurately. Right? They, the FBI heard you right when you said this. Right?

A. This is what they understood the conversation to be.

Q. Okay. You told them because you wanted to go in and the question in your mind was how the division orders, you had the division orders with Walter's name on them, Walter Nixon's name on them, and the question is are the payments going to go directly from the company to the royalty owner Walter or is it going to be done in-house for the money, namely Getty to Fairchild and Fairchild paying it to Walter Nixon. Is that correct?

A. That's correct.

Q. And you're thinking there was something wrong about it, really wanted to say to him, we ought to do it in-house, we don't want anyone else knowing about it?

A. That is what Billy Riley and I discussed and we concurred that would be the best way to do it is approach Wiley and ask how he wanted it down.

Q. By the way, when was this done?

A. Sometime between January 19 when the division orders were done up and when the notes came in in March.

Q. In any event, you go in there and you stated you and he were alone and you purposely worn your three piece navy suit because you knew Wiley and the best way to handle him is act sure of what you're doing and he will usually go along with you on what you want?

A. That's correct.

Q. That's why you wore the three piece suit?

A. I always wore a suit to the office.

Q. You dressed a certain way, it's like body language?

A. Correct.

Q. You go in to see him and you told him, you said it's not my place to judge you right or wrong but I assume this, meaning the royalty payments to Nixon, has something to do with Drew. That's what you said to him. Right?

A. Yes. Those are my exact words.

Q. And you said, he got red in the face, angry. Right?

A. Yes.

Q. Mad?

A. Mad.

Q. Saying he was, quote, too smart for that, and that he did not get where he was by doing those kind of things. Right?

A. Right.

Q. He categorically, when you made that accusation denied it and really spit the accusation back in your face, didn't he?

A. He denied it.

Q. Angrily denied it. Right?

A. That's correct.

Q. And from that date forward, you felt a cooling from Wiley to you?

A. That's correct.

Q. You had, despite the fact that this man, who you had now known rather well, since August of 79, you now had, for the first time, the audacity to accuse him of being involved in a crime?

A. I had the audacity to go in and attempt to offer my help to my employer.

Q. You told him that you were not judging him, but you assumed that it had something to do with Drew.

A. I wanted to make him aware that it was very obvious the way it looked and I was going to attempt to tell him if there's any way I could help him out, I felt like he was a victim in this transaction.

Q. I see. And he told you there was no truth in effect to what you're saying?

A. Well, he couldn't. That's what he did.

Q. Thank you.

A. Do you expect him to come out and say, sure, this is exactly what they're doing?

Q. We'll get to that, sir.

A. Okay.

Q. Anything else you want to volunteer?

A. I've volunteered very little.

Q. You just asked what we would expect?

A. Okay.

Q. May we proceed now?

A. Of course.

Q. In any event you told the FBI that's what happened because that's what happened?

A. That's correct.

Q. You then apologized to him. Right?

A. I think basically I told him that, well, if it was that obvious I just wanted to make him aware of it. I forget what my exact words were subsequent to it.

Q. Why don't you look at it? You apologized?

A. Okay.

Q. You don't want to change that, you apologized for wrongly suggesting something to him?

A. I felt like apologizing I didn't feel like I had wrongly suggested anything.

Q. What's going to happen now, you told this to the FBI and somebody -- You, by the way, let me stop a minute. You run the FBI through the whole background, Ingram calling about the royalty checks and what you did with the paper trail, all of that is contained in this interview. Right?

A. Basically, yes.

Q. You don't hesitate to tell them about Wiley's attempt to have you killed. Right?

A. It was a major concern in my mind at that time.

Q. I'm saying in May of 33, you had almost been killed by this, Wiley must be -- I take it this is a wild man? I mean he tried to have you murdered.

A. That was my assumption, based on the events.

Q. Did you go to the police or anybody about it?

A. In South Mississippi, I went to no one.

Q. What is it about South Mississippi, don't they have police who do their job?

A. Yes, sir, we have policemen and law enforcement officers living here.

Q. You're obviously not from South Mississippi, nor am I, but I haven't noticed any less law enforcement here than anywhere else.

A. Mr. Fawer, I didn't know who I could trust; therefore I went to no one.

Q. In other words, you felt it would be better to have someone around who would engage in attempts to try to kill you than to stop him?

A. Mr. Fawer, I had no idea who I could trust.

Q. You stayed in town?

A. Where was I going to go?

Q. Nothing stopped you a year later from moving to Florida?

A. I felt that was in the best interests of the safety of myself and my family.

Q. You moved to Florida, Zachary died and you moved the next day to Florida, your boss died, your mentor died and you went to Florida. Right? What are you talking about your safety? Am I right, sir, you moved to Florida, the day, you packed up lock, stock and barrel the day after the elder Zachary died?

A. I moved during Thanksgiving weekend of 1984.

Q. Did I just hear you tell me the connection between Zachary's death and your moving? Did you move shortly after he died?

A. I moved shortly after he died yes.

Q. Did you tell Zachary about the fear about Wiley going to kill you?

A. Yes, sir.

Q. Did he say you maybe ought to go to the police?

A. No, he did not.

Q. Did he take you seriously?

A. I don't know whether he did or didn't.

Q. Who else did you take into your confidence?

A. My wife's grandmother.

Q. Your wife and grandmother?

A. Your wife's grandmother.

MS. LITTLE: Objection, Your Honor. We're gettint a little far afield.

MR. FAWER: I don't think so. May I be permitted two questions to connect it up?

BY MR. FAWER:

Q. Your wife's grandmother was one of your limited interests in Fairchild's Construction Company, right?

A. That's correct.

Q. And you're beginning to spread the word a bit about Wiley Fairchild's nefarious conduct, right?

A. I'm beginning to spread the word that I am fearful of the situation.

Q. Did you make any accusations against him? Did you suggest he's involved in any other illicit trafficking?

MS. LITTLE: Objection, Your Honor. May we approach the bench?

THE COURT: Gentlemen, ladies, it's close to noon.

MR. FAWER: More than that.

THE COURT: We're going to take a noon recess. I want to caution the jury, remind them again, do not discuss this case among yourselves until all the evidence is in. Thank you.

(Jury leaves.)

MR. FAWER: We don't need this on the record. I'll pass on.

(Brief bench conference, not reported.)

THE COURT: We'll recess until 1:30.

(Lunch recess.)

(End of Volume 3.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 29, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 4

DAVID A. SCOTT
COURT REPORTER
Post Office Box 2202
Jackson, Mississippi 39225-2202

JANET CLEMENS
COURT REPORTER
Post Office Box 517
Oxford, Mississippi 38655

NOTE:

Vol. 4 of 1-29-88

No page 458

459-463 (missing pages 460, 461, 462

2-secretaries-checked

I checked with 2 **secretaries & they said pages were probably not there --**

THE COURT: Proceed.

MR. FAWER: Proceed, Your Honor?

THE COURT: Proceed.

MR. FAWER: Thank you.

BY MR. FAWER:

Q. All right. Mr. Jarvis, we've gotten to the point where we pretty well had worked through your interview by looking at that memorandum dated in March, but I believe it may have begun, your meeting when you surfaced began sometime in late February I gather?

A. Correct.

Q. In any event, I take it you have given them this information, you have met with the people that flew down from Washington, spent some time with the FBI agents, right?

A. Yes.

Q. Does one of the FBI agents or both -- is there someone who becomes the contact point with whom to discuss where you're going from there?

A. From the initial contact when I was calling, making annonymous calls, Agent Whitespunner was my contact with the FBI.

Q. He remained that way?

A. He remained that way.

Q. Right into April?

A. April of --?

Q. April of 84. The month after this happened, the month after you met with him?

THE MARSHAL: You'll have to speak up a little louder.

(Off record briefly.)

THE WITNESS: I'll sit closer to it.

BY MR. FAWER:

Q. Mr. Jarvis, as I understand it, between your meeting in mid-March and sometime in mid-April, the idea is devised for you to put on a body mike, a recording device, and go see Wiley Fairchild, right?

A. In our initial conversation when I first met with them they asked me if I would assist with the investigation, whether I would in fact -- I was asked would I ultimately be willing to do that.

Q. You told them yes?

A. Yes.

Q. Happy to do it, one of those things?

A. I was very tentative but agreed to do it.

Q. Anyway, who suggested that?

A. I'm not certain. Either Mr. Richter or Mr. Weingarten at that point.

Q. Okay. They said, the idea was that you would in some way go back and meet Wiley Fairchild in an effort to see if anything could be gleaned from your conversation which would corroborate this criminality that you thought had gone on?

A. They didn't discuss with me the ultimate reason. I was just asked if I would be willing to. We didn't discuss why.

Q. Well, you then, somebody had to put the body mike on you, right?

A. That's correct.

Q. I take it before that happened you had to figure out, somebody had to come up with a scenario, because you weren't talking to Wiley, you couldn't just walk in his office at that time, right?

A. I did.

Q. Sure you did. You came up with an excuse to do that, didn't you?

A. He had already been confronted by the FBI agents.

Q. Yes, you know it and I know it. You came up with a plan, carefully thought out, right?

A. Not really a plan. The object was for me to go and discuss this with Wiley.

Q. Someone who -- Wiley was willing to see you who in effect had told you he didn't want to have you around the office, right?

A. The way I got into Wiley's office was I called him and told him I had been approached by two FBI agents and asked him do we need to talk. His response was, we sure do.

Q. Okay. Let's just understand something. You didn't come up with that idea yourself. They told you they had seen him the week before?

A. That's correct.

Q. Okay. You mean you were like a junior G-man at that point?

A. I don't --

MS. LITTLE: We object. That is an incorrect characterization. I object.

MR. FAWER: I would withdraw the attribution of junior G-man. Is that all right?

MS. LITTLE: Yes.

BY MR. FAWER:

Q. You were taken, you became part of this team, so you knew what they were doing vis a vis Wiley Fairchild, is that right?

A. I was requested if I would lend assistance in this particular matter.

Q. You knew that on April 10th they had gone to see him?

A. I'm not sure exactly what date they had gone to see him. I knew they had been to see him.

Q. On a few occasions?

A. I'm not sure how many.

Q. The idea was, you had mentioned after that you would call him and say that you needed to, you needed to see him because you had been approached or contacted by some FBI men, right?

A. My question to him was do we need to talk. His response was, we sure do.

Q. You didn't tape that or anything?

A. I don't know.

Q. Could I ask a question? Usually the FBI makes notes of these things or memos. Did you report that to the FBI?

A. What?

Q. Your telephone conversation when he says we sure do?

A. I'm not sure if this was taped or not. I really don't remember.

Q. Are you telling it to somebody for the first time today?

A. About this telephone call? This was done, let me back up and explain how the situation came about. I was in the law alcove at Southern.

Q. Where?

A. The law alcove at Southern, the library at the University of Southern Mississippi. Agent Whitespunner, I think it was Agent Lawless was with him. I might be incorrect on Lawless.

Q. Who is that?

A. Gentleman sitting here. I think it was him at this time. I know Agent Whitespunner was there. They came and asked me if I would still be willing to do that, would I be able to do it on that day.

Q. My question to you is you made this phone call?

A. Yes, sir, I made the phone call.

Q. You told us this is what Wiley said, you sure do. We sure do need to talk, right?

A. Right.

Q. You know whenever you tell something to the FBI, they write these 302's you've been looking at?

A. I don't know.

Q. Have you ever seen one?

A. On this particular phone call, I don't recall ever seeing one.

MR. FAWER: Do you have one?

MS. LITTLE: No.

BY MR. FAWER:

Q. You're not telling us this was his response -- it wasn't taped or anything of this sort? You have never read -- you're saying this before -- you're telling it to us, we sure do, that's your intonation of your voice, right?

A. I was just relating a conversation I had with Wiley.

Q. Okay. How do they strap this thing on? Where do you wear it? Tell us about it?

A. It was a type of a belt type system that goes around your waist with a recorder on the back. I'm not sure where the transmitter was but the microphone was in the front.

Q. Mike's in the front, put it on under your pants?

A. It goes under your clothing. The microphone is up in the front part, where the button is, just above.

Q. You wire it under your jacket. What were you wearing that day?

A. A suit.

Q. It was under your jacket but not under your shirt?

A. It was under my clothing.

Q. Under your clothing. Somebody put it on you, Lawless, Whitespunner?

A. It was another gentleman in there, I'm not sure exactly what his name is.

Q. This is the first time you've done this? It's called Anagra.

A. I'm not sure what you call it. First time I have.

Q. First time?

MS. LITTLE: Could we approach the bench for just a minute?

THE COURT: Yes.

(At the bench:)

MS. LITTLE: I'm not sure how far Mr. Fawer intends to go, but at some point could the Court please instruct the jury this is permissible law enforcement technique?

MR. FAWER: Nobody is arguing it's not.

MS. LITTLE: I think you're implying --

MR. FAWER: I'm not. I was going to play the tape.

MS. LITTLE: I would nevertheless request the instruction.

MR. FAWER: I don't know, you can get a charge at the end of the case if you think it's necessary. I'm not quarrelling with you, I'm not suggesting it's illegal.

THE COURT: If you make any suggestion it is illegal I'll tell the jury.

MR. FAWER: Absolutely.

THE COURT: Otherwise I'm not going to say anything about it. If you want to file an instruction to that effect I'll give it to them.

MS. LITTLE: Okay.

(Open court:)

BY MR. FAWER:

Q. You gave your consent obviously to have this body mike put on?

A. Yes, sir, I did.

Q. And you then were told or was there a discussion as to what you would say to Wiley with the agents?

A. There was a discussion. However, I don't remember being instructed to specifically ask anything or to -- I was not told specifically what to ask or what to say. It was more or less left up to me when I got there.

Q. More or less what?

A. Left up to me when I got there as to how I would approach the subject.

Q. So I take it when we're going to hear this document, which we most assuredly will in a few minutes, hear the tape, all of these suggestions of wrongdoing, all of the insinuations were all your doing, correct?

A. I'm not --

Q. The suggestion of why you were suspicious and the suggestion that there had been some wrongdoing around the transaction, you wrote the script as you went along?

A. As far as the conversation with Wiley, yes.

Q. That's what I'm saying. You were going in there to try to get some information to suggest or to confirm that there was something illicit about the transaction between Judge Nixon and Wiley Fairchild?

A. That was my understanding.

Q. Okay. It was your understanding; you were going in to do it, right?

A. Yes, sir.

Q. It wasn't like your understanding what someone else was going to do.

A. It was my understandings that was the purpose behind my meeting with Wiley Fairchild.

Q. You were going in there to see if you could make a case against the Judge?

A. No, I was going in there to see if Wiley Fairchild would discuss the transaction between he and the Judge.

Q. You have said yourself, did you not, you were going after a big fish here, weren't you?

A. No, sir.

Q. Did you ever refer to him the big prize?

A. I referred to the indictment of the Judge as the big prize.

Q. Excuse me. You referred in a letter, you wrote a letter to your buddy Ken Whitespunner?

A. To Special Agent Whitespunner, I did, yes.

Q. Dear Ken, right. Let's read it before we hear the tape. It's just so good.

MS. LITTLE: Objection, Your Honor, to Mr. Fawer's opinion.

MR. FAWER: I withdraw that. We'll let the jury make the decision.

BY MR. FAWER:

Q. Let me show you the letter. Do you real need to see it?

A. Let me see it if you don't mind.

Q. Sure. Don't pay any attention to the underlining, it's mine.

A. Okay, what is your question, sir?

Q. Is that yours?

A. Yes, sir, I wrote this letter.

Q. I'd like to read it to the jury.

A. Be my guest.

Q. Thank you. Ken. Just so we understand, there is only one paragraph that really relates to this, but we'll --

A. I would like the whole thing read.

Q. Ken. As I told you over the telephone I'm not sending these copies for anything other than your information. I recognize things are beginning to move on the investigation. This is really a trivial matter. My main concern about first seeing them was Wiley feels secure enough in his position he can volunteer you, meaning Ken, to underline my credibility. I realize that I jumped to the wrong conclusion and apologize. That relates to some letters that are attached from Wiley to his kinfolks, correct?

A. I jumped to the wrong conclusion about Agent Whitespunner's position. I was apologizing to him.

Q. We'll come to that. By the way, four down: Wiley, Drew, Royals, and Holmes. I'm eager to go after the big prize. Keep in touch. Skip. The big prize is sitting here, isn't he?

A. Big prize is the ultimate indictment of the judge, yes.

Q. Right. What do you mean by the big prize?

A. I had been involved with this thing since 1981. There had been indictments going, the grand jury had been going for months and months and months and months. I testified before the very first grand jury. In my opinion, personal opinion --

Q. Excuse me. Go ahead. I'm sorry?

A. If the investigation was going to center around the judge, I thought it was time to go ahead and seek an indictment.

Q. Uh-huh. I take it nobody suggested that language. This is your mind putting down what you viewed this case, the big prize, right?

A. I viewed --

Q. Your language?

A. I used that terminology, yes.

Q. Now let's go to the tape. By the way, that's written a year later, right?

A. That was sometime I believe in 1985.

Q. Now we're back in April of 84, what you're trying to do if I understand correctly, gently put the hooks into Wiley, right?

A. I was seeing if Wiley would discuss it.

Q. Would you agree with my characterization or do you have a problem with it? You were going -- we're going to listen to an hour of your tape. You are trying to get your hooks into Wiley admitting there was something illicit about the transaction?

A. I was not hooking anyone, sir.

Q. It's a fact, is it not, every suggestion you made of wrongdoing, Wiley denied on that tape?

A. I would have to hear the tape.

Q. You've heard it. Am I accurate based upon your recollection --

A. Mr. Fawer --

Q. Let me finish my question. Every suggestion of wrongdoing, Wiley told you that the case of Drew had nothing to do with the business transaction with the judge, am I correct?

A. I would have to rehear the tape.

Q. You're going to.

MR. FAWER: At this point, Your Honor, may I ask that the tape be marked Defendant's Exhibit 16, the transcript of that tape be marked 16-A. There is another, just mark that 16 and 16-A for this time. Let me just, so we can do it all at one time --

BY MR. FAWER:

Q. You had this conversation in his office, right?

A. Yes, sir, office on 49 North.

Q. And you thereafter, within that same day, at the direction of the FBI, called him back after you left, right?

A. Correct.

Q. And you taped that phone call?

A. Yes, sir, it was taped.

MR. FAWER: I will mark that tape 17-A. Excuse me, 17. I beg your pardon. And the accompanying transcript of it 17-A.

Your Honor, at this time I would ask permission to distribute copies of the transcript to the jury so they can follow in aid of their following along on the listening to the tape. I would give copies of this to his Honor. Opposing counsel have copies already.

MS. LITTLE: No objection. We just pose the same objection to relevnce we posed this morning in chambers.

THE COURT: Very well.

~~MR. FAWER: Does everybody have a copy? Could the~~

jurors please read it along with the tape, not read it in advance of the tape being played. Simply an aid in understanding the tape as it flows.

BY MR. FAWER:

Q. Let me understand something first before we play the tape, Mr. Jarvis. It's fair to say, is it not, Wiley Fairchild, when you went in to see him, had not the slightest inkling you were recording that conversation?

A. I would assume not. I did not make it known.

Q. You intentionally, I mean it was your intention he wouldn't know that?

A. I had hoped he would not know that.

Q. You had every reason to believe when you were talking to him he would be totally candid, totally open in a conversation with you in which you're telling him you may be questioned by the FBI, right?

A. I did not necessarily expect him to be candid. At this time he did not trust me. We had had our falling out approximately eight or ten months before that.

MR. FAWER: Let's listen to the tape and see how successful you were.

(Plays tape.)

BY MR. FAUER:

Q. Let's just stop a minute. He told you right then and there, that the deal had already been made and that it was backdated, in his words, dated back to when it was made, see? Do you recall him saying that?

A. Yes, sir.

Q. He's telling you that the deal, the transaction had occurred back around to the date that he had told you to date it back to. Correct?

A. Correct.

Q. Let's go on.

(Tape recording being played.)

Q. Let's just stop a minute. We can stop. You heard what he said?

A. Yes.

Q. What did he say?

A. He said it didn't have a damn thing to do with Drew.

Q. What was he talking about?

A. Assuming the conveyances to the Judge.

Q. That's the same thing in effect he told you two years earlier. Right?

A. Yes, sir. He also was aware at this point that I was going to be talking to FBI agents.

Q. That's a nice assumption on your part but that man's talking to you with no understanding that you're there taping him. He is explaining to you at that point what he understood the facts to be?

A. What he wanted the facts to be.

Q. What you wanted the facts to be?

MS. LITTLE: Objection. This is argument not examination.

THE COURT: Mr. Fawer, if you're going to get in the tape, let's get into the tape. We're wasting time.

MR. FAWER: Right. We are wasting time.

(Tape being played.)

MR. FAWER: Can I turn it over, Judge?

BY MR. FAWER:

Q. That was the verbatim report of that taping that you did on April, I guess it was April 18 of 1984. Correct?

A. Yes, sir.

Q. You asked any and all questions that you wanted to ask of Mr. Fairchild at that time?

A. We discussed everything that I could think of.

Q. You did all the talking and asked all the questions and you let him give the answers he chose to give. Right?

A. I asked questions and he did give answers.

Q. We just heard an accurate tape of that conversation. Correct?

A. That's correct.

Q. You left and I take it you spoke to Mr. Lawless that is sitting here or Whitespunner or somebody because you made a phone call back for some reason?

A. Yes, I returned here to the federal building and I'm not sure exactly who was present, there were several people present at the time and then I called back to Mr. Fairchild.

Q. Did they immediately listen to the tape?

A. The tape, you're talking about what we just heard?

Q. Yes.

A. Yes.

Q. Somebody suggested that maybe there should be a few other questions that should be asked?

A. I'm not sure how it came up but somebody suggested I contact him back to ask a few other questions.

Q. Do you think that was something that came up or one of the agents suggested that?

A. I don't remember.

Q. You don't remember but anyway you did call him back?

A. Yes.

Q. We have a tape recording of that, which is Exhibit 17 and for the jury's information you will find the tape on the next two pages, I think the next page is labeled two, is it not? It's just two pages. We can listen to that. You're calling him later the same day. Right?

A. Yes, sir. I'd say within about 30 minutes of the time I arrived back to the federal building.

Q. You're calling him and you're calling him at home. Am I right?

A. I don't remember whether he was at his office or at home. I don't remember.

Q. You remember asking him, I hope I caught you during the sports? He would leave the office every day at 5 o'clock to watch the news?

A. Right.

Q. And the sports?

A. Well, it was the news portion he went to see.

Q. It's clear if you were asking him that question, you caught him at home then. Right?

A. Yes, sir, if I asked that, that would be a safe assumption.

(Tape is being played.)

Q. Let's talk about that for a few minutes. You called him back up to specifically find out whether the price that Judge Nixon had paid was a fair price for those assignments, mineral assignments, didn't you?

MS. LITTLE: Objection. Your Honor, I think the tape speaks for itself. I don't think we need to have it paraphrased again.

MR. FAWER: I think I have the right to ask that question. I'm not going beyond it.

MS. LITTLE: I think the tape speaks for itself.

MR. FAWER: I'm not questioning it.

BY MR. FAWER:

Q. You heard the tape, didn't you?

A. Yes, I heard.

MR. FAWER: May I continue, Your Honor.

THE COURT: Yes, you may.

BY MR. FAWER:

Q. You heard the tape, didn't you?

A. Yes, sir, I heard the tape.

Q. You heard him say at the time, way before the papers were drawn up, that that was the fair value, did he not?

A. Yes, he said --

Q. It's very common for a deal to be made and for the papers to get drawn up long after, isn't it?

A. That's what he said, yes.

Q. And in fact that's precisely what happened in this case, isn't it, sir?

A. I have no earthly idea about that, sir.

Q. Because you don't know anything about when the deal was really made. Right?

A. I know what day I was requested to draw up the conveyances, sir.

Q. And everything you're testifying to here or -- excuse me, what you had told the FBI and what you told the Grand Jury, you were dealing in suspicions, speculations, and opinions only?

A. I was dealing on things that I had been told by Mr.

Fairchild and a chain of events that took place.

Q. Were you dealing on speculation, suspicions and opinions only?

MS. LITTLE: Objection. This is argument.

MR. FAWER: I'm quoting from his Grand Jury testimony, with all due respect, page 44.

BY MR. FAWER:

Q. Would you like to see it? I think you ought to.

A. I was dealing in the events and the items that were present before me and my conclusions that were based on those events.

Q. Look at the question and answer at page 44. If you would like to look at the question and answer before and after that, feel free. In fact the question puts it to you just in those terms, does it not, by the gentleman who is reading it right here?

A. I think to properly understand this, Mr. Fawer, you need to go back and read a few preceding questions.

Q. I've read it.

A. You're pulling this out of context, sir.

Q. Surely you will be able to, through your counselor, -- excuse me, government prosecutors to correct any misimpression. You were asked whether or not you were dealing at that point in time in speculation -- suspicion, speculation and opinion. And you say yes.

A. As to the questions whether or not Wiley was a willing accomplice or victim is to what that was, sir.

Q. May I read it to the jury, sir?

A. Please do, sir.

Q. Again we are dealing with what can be called your suspicions, speculations, opinion as to anything beyond the evidence that you are giving here and will continue to give. Is that correct? Answer, at this particular time, yes. Did you give that answer to that question under oath at that time?

A. I did based on the question prior to that, sir.

Q. Thank you. Was that the question you asked?

A. But that does not tell everything, sir. You need to go to the prior question.

Q. Is it fair to say all that you testified in the Grand Jury was based on speculation and assumptions of facts about which you knew very little?

A. That is incorrect, sir.

Q. Did you know anything that had occurred, did you know anything about the conversations that had occurred between Ingram and Judge Nixon?

A. No.

Q. In 1979 or 1980?

A. No, sir, I knew of no such conversations.

Q. You were not privy to them, were you?

A. No, sir, I was not.

Q. Were you privy to a single conversation between Carroll

Ingram and Wiley Fairchild in which this transaction was negotiated?

MS. LITTLE: Objection. Your Honor, this has been gone over, time and time and time again.

MR. FAWER: It has not. I have not touched on that.

MS. LITTLE: You did before lunch.

MS. LITTLE: I submit it's repetition. I don't want to hear it again.

MR. FAWER: Let me rephrase it.

BY MR. FAWER:

Q. I heard you in answer to Mrs. Little's question tell us about the conversation you had with Wiley on February 25 and I noted that in your testimony, you testified that he called you, you had a conversation with him in which he told you to leave the grantee blank. Do you remember that?

A. Yes, sir.

Q. Who else was present?

A. Carroll Ingram was present.

Q. How come you didn't tell that when Mrs. little was present this morning you want to see your testimony?

A. I wasn't asked that question this morning, sir. I was asked who gave the instructions and what the instructions were.

Q. You just left out the fact that Carroll Ingram was present?

A. I answered solely what I was asked, sir.

Q. So her question did not include Ingram as being presnt therefore you didn't respond to it that way?

A. Yes, sir.

Q. Was Carroll Ingram present at that time?

A. Yes, sir, Carrol Ingram was present at that time.

Q. Was the acreage discussed at that time or just leaving the grantee blank?

A. Yes, sir, the acreage, Mr. Fairchild told me the acreage, he told me to draw up the conveyance with one acre at that time.

Q. Was Carroll Ingram there?

A. Carroll Ingram sat there in the chair right in front of Mr. Fairchild's desk.

Q. Let me go on, see if I understand something. According to what Mr. Fairchild said when this deal, this transaction occurred, this was a fair price. You heard that on the tape, I don't want to go over it again. Is it fair to say out of every eight or nine, every ten wells, eight of them come up dry holes?

A. That's a fair assumption in Mississippi, yes.

Q. Fair to say, Mississippi or Mobile, too?

A. For the particular prospect in Mobile, Alabama, it was in Hatters Pond, an already proven area.

Q. If I'm correct -- By the way Wiley Fairchild had paid in the neighborhood of about $200 an acre for the same land, excuse me, the same acreage that he was selling to Judge Nixon.

Did you know that?

A. I'm not sure what he paid for it. It was already purchased prior to my coming to the company.

Q. Are you aware of the fact he made three or four hundred times profit versus what he charged Judge Nixon?

A. I don't know what he paid for it, so it didn't concern me, sir.

Q. Let me ask you this, you do know, do you not, when wells are tested there are oft times when a well is not a successful producer. Is that correct?

A. That's correct.

Q. In fact the Covington well, did it ever return the money that was invested in it?

A. At this point sure I'm not sure. I know the L. D. Ross well in Covington County did not produce that well.

Q. It was one of the wells that was sold to Judge Nixon, wasn't it?

A. He purchased three acrs in that -- I'm sorry five acres is correct.

Q. Let me ask you this, you did the calculations, it may be a minor point, did you calculate how much to send Judge Nixon the check on that? You did, didn't you?

A. As far as the money, the payment?

Q. On Covington.

A. I'm not sure. I calculated the division order interest but

I'm not sure if I --

Q. You calculated the division order?

A. That's correct.

Q. Did you calculate it based on three or five?

A. I have subsequently been informed that I made an error on that, that I calculated it at three.

Q. What you're telling us is you not only made an error, Wiley Fairchild owes him some money, doesn't he?

A. If -- well, yes.

Q. What do you mean, "well, yes"?

A. I was going to say if there was production, if there was revenue.

Q. Anybody accuse you of a crime for a simple error?

A. No, sir.

Q. He paid for five acres and you only paid off on three. Right?

A. That would be my assumption.

Q. I assume it was an innocent error?

A. I did not deliberately calculate it on three versus five.

Q. But it was for all practical purposes, the loser on that error of yours was Judge Nixon?

A. It would have been the Judge who would have been the one to come up short on that.

Q. By the way, the Judge never, as far as you know, he never second-guessed or said I want to calculate it myself? It's only after the fact we know there was an error made by you or had it --

A. I don't know whether the Judge calculated or not. He signed the division order and sent it back and I took it from there.

Q. Did the Judge ever suggest you made a wrong calculation?

A. The judge never communicated to me.

Q. Did his secretary, who communicated with you on the telephone on a number of occasions with you?

A. The only communication I had with his secretary was on the interest and principal payments.

Q. You sent him the checks and he accepted them?

A. I assume he accepted them. I did not send him the checks.

Q. Didn't you have direction over these other two?

A. No. The payments would have come either through Billy Riley through the construction company or Margaret Buckley for the Fairchild Windham.

Q. The company sent the checks and paid them to him?

A. The company sent the checks.

BY MR. FAWER:

Q. Let me show you what I have marked as Exhibit 19. Let me show you some documents which I guess you've seen before. These are the originals. Defendant's Exhibit 19. These are the three promissory notes which your original signatures appear on, correct?

A. That's correct.

Q. These are each of the checks sent in the mail I assume to your company by Judge Nixon, his name is on them, right?

A. That's, signed by Walter L. Nixon, Jr.

Q. Name is printed right on the top of the check?

A. That's correct.

Q. When these checks come they didn't come in any sort of secret envelope or anything; came in in payment of these notes, correct?

A. I'm assuming these -- these particular ones marked on pay off.

Q. I can't hear you.

A. This particular one on top is marked pay off on $4,500 note?

Q. So we understand. Those are all the notes which together constitute the payments made on all three notes, those checks, excuse me, constitute all payments made, both principle and interest on the three notes that are before you?

A. I don't know if they constitute all the payments. I know the notes were paid in full.

Q. Do you need anything else to know that?

A. I would have to add these checks up to say that. I'll assume, take your word for it these pay them.

Q. Okay. And do you have any knowledge as to the value of these wells in February of 81? You, do you have any knowledge?

A. As far as placing a dollar and cents value on those, I would not be in a position at this time to do it. I can tell you the prospects and the profitability outlook for them, but I can't sit down and say it would be four dollars and nine cents of eight dollars and nine cents.

Q. Had there been any production?

A. From which well?

Q. Any of them?

A. I believe the Rogers was shut in in 81. You asked me about 80 or 81?

Q. Any of them?

A. What time are you asking?

Q. February of 81?

A. Okay. The Wilkie was in the process of being completed.

Q. Let's stop a minute. In the process of being completed, that means there was no production, correct?

A. No production on --

Q. Stay with me on Wilkie for a while.

A. Okay.

Q. How many times have you seen a well completed and then problems arise?

A. It's fairly often that happens.

Q. If it has problems, could be mechanical problems?

A. Yes.

Q. Saltwater flowing through them?

A. Yes, sir.

Q. Casing can be bad?

A. Yes, sir.

Q. We could go on and on. Anybody that's been in that business, the fact you complete a well is no guarantee you're growing to get a return on your investment, right?

A. That's correct.

Q. Is it fair to say we're talking about wells that cost just to put into operation, some of them cost in excess of seven million dollars per well?

A. I believe the last APE, authorizion for expenditure on Wilkie was 6 point 6 million. I'm not sure what the final cost was.

Q. Just for the one well?

A. Yes, sir.

Q. Is it fair to say that -- so a well that has not been completed, while the testing may be, there maybe some potential from the testing, correct?

A. Correct.

Q. But until that well is on line and there is some flowing oil for a substantial period of time, you don't know whether it's a good well or a bad well, right?

A. The Wilkie is a gas well, not an oil well.

Q. It had both, correct?

A. It's gas with condensate.

Q. I understand. My point being, you still didn't know until after it had flowed for a period of time whether you had a winner on your hands or not?

A. We had had a consulting firm do a, not we, but the unit had been reviewed by a consulting firm.

Q. His name was Vinson, and he was wrong. Would you like to see the results?

A. You may tell me he's wrong, but you asked me in 1980 and 1981 what our feelings toward the well were.

A. Extremely optomistic. Wilkie was probably the best well Fairchild had ever had.

Q. The best ever?

A. As far as the prospects.

Q. As far as any other well, it had to first prove itself?

A. Correct.

Q. At that point in time, there is a point in time man pays a certain amount of money for the assignment, talking about Judge Nixon, right?

A. That's correct.

Q. If that well hadn't produced, Judge Nixon was still obligated to pay the payments on the notes you have before you, right?

A. That's correct.

Q. The Covington well didn't produce, right?

A. It was one of the poorer wells.

Q. He made the payments on it, didn't he?

A. Yes, sir, he did.

Q. You took them, you showed them paid?

A. Mr. Fawer, he paid the payment.

Q. You sent him back the notes after he made the payments in full, right?

A. I signed it as paid in full.

Q. Because you told us somebody else was afraid to sign it?

A. Margaret Buckley nor Billie Riley would sign their name, so I signed it.

Q. These were the same people who were sending him checks?

A. Yes, sir.

Q. Willing to send the checks to him, but it's your testimony that they were afraid to send back a paid up note?

A. It's my testimony that's what they indicated to me, sir.

Q. In any event, did they tell you they were afraid somebody was going to kill them?

A. No, sir, they didn't tell me that.

Q. That was a fear only -- only you had that fear, is that accurate? Is that accurate?

A. Mr. Fawer, at this time I was not concerned about that. I was concerned about, the time this note was paid off, which would have been --

Q. March, 83. Two months before the death threat on you?

MS. LITTLE: Your Honor, I object to continued reference by Mr. Fawer. Editorializing is just unnecessary.

BY MR. FAWER:

Q. Two months before you believe an attempt had been made on your life?

A. May of 1983 was the incident that I referred to.

Q. Pay off was when?

A. Pay off on this thing was March 7th, two months earlier.

Q. I just said that. I just said two months before the threat on your life, right?

A. Yes, sir.

Q. Okay. And by the way, I hope nothing has ever -- there has been no repeated attempts?

A. There was one more incident in August of 1984, sir.

Q. August of 84?

A. I cannot, I can't sit here and tie in into this thing.

Q. I want to hear about it. August of 84, you've gone to the grand jury?

A. Excuse me. August of 83, I apologize.

Q. I'm sorry, you haven't gone to the grand jury, you haven't called the FBI. You've had a death threat, there is an attempt on your life in May of 38?

A. You keep referring to it as a death threat.

Q. Attempt on your life. I don't want to be misunderstood. An attempt on your life?

A. That's what I perceived it to have been, sir.

Q. What happened in August of 83?

A. My truck was tampered with.

Q. Who this time?

A. I have no earthly idea.

Q. Where did it happen?

A. Apparently at my home while I was not there.

Q. Two attempts to your life as you perceived them in a four month period of time, and you don't go to anyone from the authorities to report this, am I correct?

A. That's absolutely correct, sir.

Q. Okay. And then begins three months -- of course these both occur after you are discharged by Wiley Fairchild?

A. That's correct, sir.

Q. And it is now two months after you're going to begin your annonymous phone calls to the FBI?

A. Three.

Q. Three months?

A. August to November.

Q. November. So if I understand correctly, two attempts have been made on your life, and you are going to in effect accelerate the risk of your being in danger by talking about these criminal episodes to the federal government, and you don't know if you can trust them either?

A. Mr. Fawer, there comes a point in everybody's life where they need to make a decision, to do something or not. In November I decided something needed to be done. I had originally decided in 1981 that the thing needed to be looked at. In 1982 I continued with that. I never wavered from that.

Q. When you say in 1981, what did you do in 81? I don't want to rehash it, but what did you do in 81?

A. I commenced saving this material in an attempt to protect my employer.

Q. You began -- then you made the paper trail?

A. Correct, sir.

Q. And never bothered to find out the real facts about it?

A. That's incorrect, sir.

Q. Did you ever attempt -- let me --

A. Yes, sir, I attempted --

Q. Bottom line, as you sit here on the stand, as far as you sit there, do you know of anything this man has ever done in connection with the Drew Fairchild case?

A. No, sir, I cannot say anything.

Q. Okay. On the federal level, just deal with that, he's a federal judge. Do you know of anything improper that he did on the federal level vis a vis the Drew Fairchild --

A. You are asking me of my own personal knowledge?

Q. I would hope, you obviously -- Let me stop. The answer is yes, sir, I'm asking of your own personal knowledge?

A. Of my own personal knowledge no.

Q. Do you know of anything else, based on anyone else's knowledge, anything he did?

A. I would have to refer to reports.

Q. Anything you can tell us from the stand right now, without reports?

A. No, sir, I would not be able to make anything of any personal knowledge.

Q. You don't hesitate talking about what other people tell you, do you? You haven't up to now. Have you?

A. Is that a question?

Q. Sure is.

A. No, sir, I testified here to what you've asked me.

Q. You speculated and opined and surmised for the last four years of your life, right?

A. Based on the incidents and the documentation and the comments that were made to me by my employer, that is where I reached my opinion, sir.

Q. Do you know of anything this man did with respect to getting the case handled, affected, influenced on the state level?

A. No, sir.

Q. Do you know, have any way of concluding that this transaction between he and Wiley Fairchild had not occurred long before the Drew Fairchild criminality in August of 1980?

A. A couple of things would lend me to say it did not occur, sir.

Q. Tell me what things you know of that would lend you, lead you to that conclusion?

A. The subsequent, first of all would be the backdating.

Q. We've gone over the backdating. I need to keep -- I understand it. I don't want Ms. Little or the judge telling me I'm repeating myself. You've told us time and again, backdating is common, correct?

A. Yes, that's correct.

Q. That is a perfectly legitimate way of dating an event which had really, or transaction would have been negotiated at a date earlier than the papers being drawn up, right?

A. Right.

Q. So that backdating is a purely neutral fact from which you could conclude nothing, am I correct?

A. That is your conclusion.

Q. I want yours. If you tell me it happens on many occasions, and it is not an act that you would describe as criminal in nature?

A. May I complete the answer to your other question?

Q. First answer that one.

A. We backdated things when it was necessary, sir.

Q. So you don't know -- what do you mean necessary, or proper? What do you mean necessary?

A. When necessary when it was to our advantage, sir.

Q. In other words, you're saying you backdated only to accomplish an improper end?

A. Well, on these particular instruments, sir, it was not necessary to backdate. They were effective the date of first production, so it was irrelevant what date they were dated.

Q. Excuse me. If the value was paid, a value had been agreed upon a year earlier, should not the deed reflect and the notes reflect, be dated when that value was agreed upon?

A. That's your opinion, sir.

Q. I'm asking you. Wouldn't that be a perfectly legitimate reason for dating it back to the date of the transaction?

A. It would not be necessary since they were effective the date of first production.

Q. Is necessary -- is necessity the only reason for doing things, or is propriety and logic as well as a reason for doing it?

A. If it was proper and if it was logical that everything was concluded back in 1980 Mr. Ingram would have corrected the amount of acreage and we wouldn't have had to go back and redo the second set of deeds.

THE COURT: Gentlemen, let's take a recess.

(Recess.)

MR. FAWER: Very briefly.

BY MR. FAWER:

Q. One other point. When we broke, you were saying something about correcting the acreage, I made a note of it. You were talking about backdating you said something about Carroll Ingram and correcting of the acreage. Do you recall what I'm referring to?

A. Yes, sir.

Q. What were you saying?

A. What I was saying is that if Carroll Ingram had been privy to the negotiations, if they'd taken place back prior to 1981 when Mr. Fairchild gave me the instructions to draw up the conveyances of one acre each, then Mr. Ingram could have very easily corrected that by his instructions but he did not.

Q. That conveyances that were in the envelope, that is now the envelope that is in evidence, he sent back the deeds. Right?

A. Yes, sir. The envelopes came back in the manila envelope.

Q. The deeds came back. Right?

A. Yes, sir.

Q. Okay. No problem. You were told to make two corrections?

A. I was told to change the acreage and change the day.

Q. You have no knowledge or understanding whether it was Carroll Ingram who told Mr. Wiley Fairchild that both should be done?

A. I know that Mr. Fairchild wrote three, three and three on the envelope and then he verbally told me to change it to three, three and five when I went back to him.

Q. I understand that. The point is it came back from Carroll Ingram and it was after it came back that the changes were asked to be made, that you were told by Wiley to make those changes. Correct?

A. That's correct, sir.

Q. You have no awareness whatsoever and in fact I guess the one person who could tell us about that is Carroll Ingram. Is that correct?

A. That's correct.

Q. And he's still alive and well as far as you know?

A. As far as I know.

Q. Okay. And then the question is that how he would have known that he needed to have the acreage, the acreage should have been three, three and five. Right?

A. Pardon me?

Q. How would he have known that it should have been three, three and five as opposed to one? Do you understand my question?

A. No, sir, I don't understand the question.

Q. When the deeds went over they had the number one on all three?

A. Yes, sir, that's correct.

Q. When they came back, you were instructed by Wiley, --

A. That's correct, sir.

Q. -- who apparently had spoken to Carroll. Correct?

A. I would assume so, yes.

Q. And you were told to make a change from one to the new numbers. Is that correct?

A. That's correct, sir.

Q. You do not know anything as to why Carroll told him to raise the number. Right?

A. No, sir, I have no idea.

Q. And you don't know, as you sit there, that in fact that's because Carroll knew that the agreement reached back in 1980 had been for the numbers that you put on the final deed.

A. That's the point I'm trying to make. Mr. Ingram was present when I was instructed to do them one, one and one. It would have been very simple to say, uh, that's not correct, it should be three, three and five.

Q. It's your testimony that he was present as opposed to you and Mr. Fairchild?

A. Mr. Ingram was present during the entire time the instructions were given to me. He was there when I walked in, he was still there when I walked out.

Q. In any event is there anything you have to link the chain there that has anything to do with Judge Nixon?

A. No. At the time these were changed I had no idea who the instruments were going to.

Q. As you sit there now, the erasing or the change, like the backdating, as far as you know, did Judge Nixon, as far as you know, have anything to do with that?

A. I have no knowledge of him having anything to do with that.

Q. Okay. That's the same man, this gentleman who is sitting here now, whom you refer to as, in your vernacular, the big prize in your dealings with the FBI. Right?

A. I referred to his indictment as the big prize.

Q. Show me where you use the word indictment.

A. I did not use the word indictment. I used the word prize, sir.

Q. In June of 1985 -- and then we are done, when we finish the question about this, -- In June of 1985, Wiley, the man who had supported you from 1979 through law school in 83, had been convicted, he had pled guilty. Right?

A. The man who employed me had been pled guilty.

Q. And paid for your education?

A. As part of my employment, yes, sir.

Q. And he had pled. Right?

A. Yes, sir. He had.

Q. Drew had already pled long before?

A. It's my understand that Drew's case came back on the federal level and Drew was reindicted. When, I'm not sure, --

Q. We have heard about that.

A. -- I'm not sure when Drew ultimately entered his second plea is what I'm trying to say.

Q. March of 85?

A. Okay.

Q. Before June. Right?

A. Right.

Q. Royals had been prosecuted. Correct?

A. Correct.

Q. And the only one who hadn't was the big prize, Judge Nixon. Right?

A. The indictment would have been the ultimate culmination of my involvement.

Q. In what way was it the prize?

A. Prize was just a word I pulled out of the air. It has no direct impact on that thing, other than the fact that I did not come right out and use the name Judge Nixon in that term.

Q. What do you mean by prize? We can look in the dictionary. You chose the word. What do you mean by big prize?

A. Big prize, I meant I had been involved in this Grand Jury investigation going back to about 1984, a continuation for this grand jury had gone for many, many months. In July of 1984, I was convinced that ultimately the Grand Jury would have to look at Judge Nixon. I was ready for the Grand Jury to take action on Judge Nixon.

Q. Based on your speculations, surmises and opinions?

A. Based upon the information I provided in my Grand Jury testimony.

Q. And I take it, so I understand it, it was no better today than it was when you engaged in these speculations, surmises and opinions. Correct?

A. My Grand Jury testimony is based on my opinion of how things happened, sir.

Q. That's the same thing you're basing it on now?

A. I'm basing it on the same things I testified on before the Grand Jury.

MR. FAWER: Your Honor, I have nothing further, except to move Defendant's Exhibits 15, 16, 16A, 17, 17A and 19, Your Honor.

MS. LITTLE: Just a second. No objection.

THE COURT: They may be received.

MR. FAWER: Thank you, Your Honor. I have no other questions.

(Exhibit No. D-15 marked).

(Exhibit No. D-16 marked).

(Exhibit No. D16-A marked).

(Exhibit No. D-17 marked).

(Exhibit No. D-17A marked).

(Exhibit No. D-19 marked).

MS. LITTLE: No redirect, Your Honor.

WILEY FAIRCHILD,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WEINGARTEN:

Q. Good afternoon, sir?

A. Hello.

Q. Your name, please?

A. Wiley Fairchild.

Q. Mr. Fairchild, where do you live?

A. Hattiesburg.

Q. How long have you lived there?

A. Oh, about thirty some odd years.

Q. Where are you from originally?

A. Seminary, Covington County, Mississippi.

Q. Is that where your kin is from? Is that where your family originally comes from?

A. Yes.

Q. How old are you, sir?

A. 73.

Q. What is the extent of your formal education?

A. I've got to the fifth grade.

Q. What business are you in?

A. Formerly in construction, now in oil exploration.

Q. Where is your business housed? Where do you go to work everyday?

A. Highway 49 North about half mile north of the intersection of 49 and Hardy Street.

Q. If someone went out there what would they find? What's out there?

A. They would find a big tin shop and some equipment and an office building.

Q. What goes on in that building?

A. Well, I run the oil department and my brother Rodney runs the construction company.

Q. What does the construction company do?

A. They principally drive piling, but we do a number of things.

Q. Give us some examples?

A. What?

Q. Give us an example of what you do?

A. Well, we built bridges, we have built dams, we set concrete beams.

Q. Where do you do this work?

A. In Florida and Alabama and Mississippi, Louisiana, Arkansas, Kentucky and Tennessee.

Q. How many employees does the construction company have?

A. Oh, it would be a wild guess. Sixty or seventy now. I'm talking about W. R. Fairchild Construction Company. We got Florida Construction Company got an office in Monticello, Florida, and sometimes they have three or four hundred employees.

Q. All right. What is your involvement, or what has your involvement through the years been in the construction company?

A. Well, I was general manager up to, oh, some fifteen years ago.

Q. And then what happened?

A. Well, I got involved in oil exploration and my brother Rodney, R. D. Fairchild, Rodney Construction Company.

Q. What do you do during the day? How do you keep busy?

A. Well, I come in, open the mail and make any necessary phone calls. I usually go around to some wells that we're drilling in Jeff Davis, Marion, Covington County, Jones County.

Q. So you buy and sell oil interests or mineral interests?

A. We buy. We -- I don't do much selling.

Q. Okay. What do you do with the interest once you have purchased it?

A. Well, I buy it to keep.

Q. To see if the revenues start coming in, if the well develops?

A. Well, we buy leases and buy leases and then, in places where we think they're good hopefully that somebody will drill a well.

Q. What is the extent of your inventory? Can you tell us how many interests you have, or what's the dollar figure? Just give us any indication of what your inventory might be?

A. Fairchild Weathers, which I own 40 per cent, owns about 25 thousand mineral acres and some leases, and the construction company owns 30 per cent and Rodney 30 per cent. And then Crosby Mineral Resources, which Fairchild owns about 17 per cent, and they own a 153,000 mineral acres.

Q. Can you give us a figure of revenues that are generated in a given year, an average year?

A. Well, the revenue is down. It's about five million last year I think.

Q. Now in either the oil business or the construction business, does the Fairchild Company ever get involved in litigation in court?

A. Yeah, we have some cases pending from time to time.

Q. Okay. Now who is Drew Fairchild?

A. That's my son.

Q. And can you describe in very general terms the relationship you've had with Drew over the years?

A. Hadn't been good.

Q. Why not?

A. Well, he was taught to hate me when he was a kid. His mother quit me --

Q. All right. Is it fair to say you didn't raise Drew?

A. That's right.

Q. Is it fair to say, as Drew got older he came to live with you and you came to know him?

MR. FAWER: Excuse me, with all due respect. I would appreciate if there are no leading questions, even on the background, that Mr. Fairchild, unless there is a question that's not understood, should be asked questions on direct, but they shouldn't be leading questions.

THE COURT: Do you have an answer to that?

MR. WEINGARTEN: No, I'll rephrase the question.

BY MR. WEINGARTEN:

Q. Did there come a time when Drew lived with you?

A. Yes, when he was about twelve, thirteen years old.

Q. And has he lived in Hattiesburg or in Mississippi ever since?

A. Well, he lived in Florida one time.

Q. As Drew became an adult, did you have a relationship with him?

A. Yeah, he worked with me from time to time. He'd come to work, get dissatisfied and he would quit.

Q. So how would you characterize the relationship as it developed over the years? What would be your terms?

A. Well, it's not near as good as I would like for it to have been.

Q. What is the situation right now?

A. It's better than it's ever been.

Q. Is there a working relationship between you two?

A. Yes.

Q. What is it?

A. Well, he goes with me around to the oil fields, we discuss this prospect and that prospect.

Q. When did the relationship improve?

A. Oh, it started improving I guess about eighteen months ago.

Q. What happened?

A. Well, I don't know, it just happened. He begin to come around to the office.

Q. Do you have any idea what caused the improvement of the relationship?

A. Well, I think he found out that I really wanted to help him.

Q. And in the last eighteen months how has the relationship been?

A. It's been satisfactory.

Q. Okay. Who is Carroll Ingram?

A. He's a second cousin of mine and one of my former attorneys.

Q. Where does he live?

A. Here in Hattiesburg.

Q. Describe your relationship with Carroll Ingram?

A. Well, he was an attorney and I used him from time to time, and we have some politics together and supported Evelyn Gandy together when she ran for governor last time.

Q. Did you have any relationship with Mr. Ingram when he was

Senator Ingram, did you help him?

A. Yes.

Q. How did you help him?

A. Well, I contributed to him financially when he would run for office, and then --

Q. Did you help him get through school?

A. Yes.

Q. How did you do that?

A. With cash, money.

Q. What about his political campaigns for the state senate?

A. Well, I contributed to his campaign.

Q. Do you recall right now how much?

A. No. No.

Q. You mentioned something about Evelyn Gandy. What was your relationship with Carroll Ingram in regard to her?

A. Well, he was promoting her, he was out raising money for her, and he promoted me and Rodney in there. We contributed real heavy to her campaign.

Q. About how much?

MR. FAWER: Your Honor, may we approach the bench for a minute?

THE COURT: Yes.

(At the bench:)

MR. FAWER: Your Honor, I would object. I was listening to some of the stuff having to do with contributions to Ingram's campaign, perhaps I can understand it; how can the amount of a contribution to Evelyn Gandy, a non-successful gubernatorial candidate, have any bearing on this case? I would object to it.

MR. WEINGARTEN: I think it bears upon his relationship to Ingram.

MR. FAWER: You've been told you can't do that under the rulings the Judge has made. The Judge ruled on 404(b). How did the contributions fit any other --

MR. WEINGARTEN: Obviously the relationship between Ingram and Wiley Fairchild are relevent to some portions of this case. He will testify he contributed about three hundred thousand dollars to the campaign because Ingram told him to.

MR. FAWER: So what? What does that have to do with Judge Nixon.

THE COURT: Overruled.

(Open court:)

BY MR. WEINGARTEN:

Q. Mr. Fairchild, I believe I had asked you if you had made some contributions to Evelyn Gandy's campaign. What was your answer?

A. Yes.

Q. And how much?

A. Approximately three hundred thousand dollars.

Q. And why did you do that?

A. Well, I'm just noted for being a heavy contributor to different people's campaign.

Q. Well, aside from being noted for that, why do you do it?

A. Well, I like to have a friend in the Governor's mansion.

Q. Did you make contributions to other political offices as well?

A. Yes.

Q. What offices?

A. Well, senator, the Attorney General, secretary of state.

Q. All right. Do you know Bud Holmes?

A. Yes.

Q. How do you know him?

A. Well, I've been knowing him for years.

Q. In what context?

A. Well, he's called on me for contributions to the Southern Foundation to help the college, help recruit college football players.

Q. Did you make a contribution there?

A. Yes.

Q. Do you also make charitable contributions?

A. Yes.

Q. What is the biggest contribution that you make?

A. Oh, quarter of a million dollars.

Q. To whom did you make that?

A. To the Mississippi, Southern Mississippi Foundation.

Q. Is that in connection with the university here in Hattiesburg?

A. Yes.

Q. All right. Did you ever contribute to any of Bud Holmes' political campaigns?

A. Yeah, but just, it was, I don't remember how much, but yes.

Q. Did he ever solicit money from you for any other campaign other than his own?

A. Yes.

Q. What?

A. Well, I can't remember all of them. Maurice Dantin when he ran for governor was one, and --

Q. Are you frequently solicited?

A. Yes.

Q. And how do you respond usually?

A. By contributing.

Q. Why do you do that?

A. Because I want good government.

Q. Is there any other reason?

A. Yeah, if you got a friend that's -- if I got a friend that needs some help sometime it's good to have somebody you can help.

Q. Does it help if that someone is in public office?

A. Yes.

Q. Do you frequently contribute to both sides of the campaign, if two people are running in the same campaign, do you?

A. If I do I tell them both.

Q. Have you done that in the past?

A. I have, but I can't recall one where I've done that.

Q. All right. If you do that, how does that help get good government?

A. Well, you'll be able to talk to either one of them that gets elected.

Q. Okay. Who is Skip Jarvis?

A. He's a former employee of mine.

Q. What is your relationship with him?

A. Well, I had to, I had to let him go.

Q. Let's start from the beginning. Is he kin to you?

A. He married my oldest sister's granddaughter.

Q. Where is he from originally?

A. Florida.

Q. And what is the granddaughter's name?

A. Pamela Manasco.

Q. M-A-N-A-S-C-O?

A. Yes.

Q. How did you come to know Skip Jarvis?

A. He applied for a job.

Q. Was he living in Florida at the time?

A. Yes.

Q. And how did you respond to the application?

A. Well, we talked about it for some several weeks, the best I remember, and finally I hired him.

Q. In what capacity?

A. Well, he was my assistant in running the oil division.

Q. I asked you a bunch of questions about the set-up in the construction company; I neglected to ask you questions about how the oil division is set up. Would you take just a moment and explain to the ladies and gentlemen of the jury, who is employed there, who does what, and what do you do?

A. I'm head. I had Jarvis as my assistant, I had two more people that work under him.

Q. At the time do you recall their names?

A. Yeah, Lynn Jones, who is presently the manager now, her and Mike Moore and we had a Sherry Barnett.

Q. Okay.

A. Then I had some land men, but these I'm speaking of now work in the office.

Q. Okay. On a day to day basis, what would Skip Jarvis do, what would he be in charge of?

A. Well, just, just generally running of the office, seeing that the leases that the oil man had taken the previous week was filed, that the delayed rentals on the leases was paid.

Q. Is it fair to say he handled the paper in your office?

A. Yes.

Q. Okay. Was he competent?

A. While he was there I thought he was doing a good job, yes.

Q. Is he bright?

A. He's intelligent, yes.

Q. In fact, did you help him improve upon his education?

A. Yes.

Q. What did you do? How did you help him?

A. I put him through law school.

Q. How did he manage to handle law school and working for you?

A. Well, he drove back and forth to Jackson, Mississippi, and taken, he had the time off necessary to do that.

Q. Okay. And you paid for it?

A. Yes.

Q. And Mr. Fairchild, did problems develop in your relationship with Mr. Jarvis?

A. A problem, yeah.

Q. And what was that?

A. We was talking with two fellers about opening up a restaurant and they had the ability and I told them that, I'd say, now y'all got us over a barrel, I want y'all to take a polygraph test, I want to know that you're sincere. Me and Rodney will take one, Skip Jarvis, he will take one, and then we'll know where we stand and he refused to take it.

Q. Did you want Skip to take the polygraph because of this restaurant business or did you have another reason in mind?

A. I wanted to show good faith in these two fellers that was there. I wanted to get, I wanted to get what kind of people they were.

Q. Do you have a special trust in pole graphs? Do you believe in them?

A. Yes.

Q. All right. And Skip didn't want to take one?

A. Well, he just said he wouldn't.

Q. And what did you do?

A. Well, working people, like I had no alternative, when somebody like that refused to take and other people would take them, I'd have to let him go.

Q. Did a problem develop with Skip in your family?

A. Yes.

Q. And, in very general terms, what was the problem?

A. Unbeknownst to me, before I fired him, he tried to get my sisters to kick me out of the company.

Q. And did there follow from that a bunch of dispute within your family concerning you and Skip Jarvis?

A. Yeah, all five of my sisters was turning against me and I could just tell by my instinct something was wrong and I begin to write a bunch of letters and it wasn't long until I had four of them to believing what I was saying instead of believing what Skip was saying.

Q. All right. Did hard feelings develop between you and Skip?

A. Well, when I found out about this, yeah, I didn't like it. Sure. I didn't.

Q. Did you ever do anything to try to hurt Skip?

A. No.

Q. Did you ever have anyone else try to hurt Skip?

A. No.

Q. What are your feelings about Skip right now?

A. I really don't know how to answer that question.

Q. Do you continue to have hard feelings towards him?

A. I simply can't understand when I was paying his tuition and going to school and furnishing him an automobile, I cannot understand why that he was trying to take over the company.

Q. And you believe that he was?

A. Yes, I believe it, yeah.

Q. Okay. Did there come a time when your son got in some trouble with the law?

A. Yes.

Q. When did you come to know this?

A. Oh, some time after, some time after the drug bust down here at the Hattiesburg airport.

Q. And how did you come to know it?

A. I don't remember whether he told me or Bill Porter or Carroll Ingram or who. I just don't remember.

Q. What was your reaction?

A. I was thoroughly disgusted with it.

Q. With who?

A. With my son, Drew.

Q. Were you shocked as well?

A. Yes.

Q. Did you have any anticipation or any suspicion this was going on?

A. No.

Q. Did you have any other feelings with the bust or any other feelings about your son's involvement, I should say?

A. Well, at that time I didn't know there was, that -- when I first heard about it, I was just shocked. I didn't have no details.

Q. All right. Describe in your own words your involvement in the case as it developed, starting with your first information.

A. Well, he wound up getting -- Well, he wound up getting Bill

Porter as his attorney and they went to Jackson and made a deal with George Phillips.

Q. Did you have any relationship with Porter?

A. Not -- Just friends.

Q. All right. Did you get involved with paying Drew's legal fees in any way?

A. Bob Royals said that Drew had promised him $10,000 and he up and sued Drew for, I think, for the $10,000 and I read it in the paper and I, unbeknownst to Drew, give Bill Porter 25 hundred dollars, I believe, plus some expenses.

Q. Did you reach into your own pocket and give Bill Porter that money?

A. Yes.

Q. Why did you do that?

A. I didn't want Drew at that time to know that I was -- Well, that's what first went through my mind but --

Q. I mean, why did you pay him at all?

A. Well, to drop that lawsuit.

Q. Why did you want him to drop the lawsuit?

A. Well, its being in the paper.

Q. And what was it about, the fact that the lawsuit was in the paper that struck you?

A. Well, it was because he wouldn't pay for that hefty amount on that, the fee on the drug bust deal.

Q. And what did you care?

A. Huh?

Q. Why did you care?

A. Well, I don't like that publicity in the paper, I didn't want no trial to come up.

Q. You mentioned Bob Royals. Who is he?

A. He was Drew's partner at the airport.

Q. Did you also have a relationship with him?

A. Yeah, at one time he worked for me, he went out and bought two leases and --

Q. Did you have a friendship with him?

A. Well, yes. Not a friendship, but I considered hiring him as my airplane pilot at one time.

Q. You considered him?

A. Yes.

Q. He's an airplane pilot as well?

A. Yes.

Q. Do you know his wife?

A. Yes.

Q. Did he ever visit you at your office?

A. Yeah, several times.

Q. Did the 25 hundred dollars that you gave to Porter satisfy Porter?

A. It later developed that it, it -- Maybe at that time but later when he got indicted by the state court he, through Bob Royals, they said they had to have another 75 hundred dollars.

Q. Who is "he"?

A. Bob Royals -- Bill Porter.

Q. Okay. Explain, start again. What happened with the other 75?

A. Well, I was told by Drew or Bob Royals, if we got another 75 hundred dollars, well, everything would be fixed, Drew wouldn't be in no trouble.

Q. So what did you do?

A. I told Drew to sell everything he had, but his house, and to get a good price on it, and I bought it. Then give Porter the money.

Q. So Porter was paid?

A. Yeah.

Q. Okay. You mentioned that Drew's case became a state case. Did you have any contact with Bud Holmes about this?

A. Bud called me when he was indicted.

Q. And what did he say?

A. He said Drew, my son Drew had just been indicted and he says, the kid, let him come on down and I'll let him out on his own recognizance. He says now he will need an attorney, you can get Bill Porter or Carroll Ingram or who. So, Drew didn't want Bill Porter and I said, Drew, you want who can do you the most good, don't you? He said, yeah. Well, Bud said get, the way he led me to believe, get Bill Porter and I said if I was Drew, that's who I would get.

Q. Did it come about that Drew retained Bill Porter?

A. Yes.

Q. What was your response to Bud Holmes' office, the DA down here, taking Drew's case?

A. What did I believe or what --

Q. How did he feel about it?

A. Well, I was mad about it.

Q. Why were you mad?

A. Well, I believe he was indicted because he was -- because I had money.

Q. And what caused you to believe that?

A. Well, he had a deal with George Phillips and he had a deal with George Phillips and I thought it was all over with.

Q. When Drew was indicted, did that cause any publicity in Hattiesburg?

A. Yes, quite a bit.

Q. Did Drew plead guilty in state court?

A. Yeah, sometimes after that he, Bud Holmes give him two minutes to plead guilty or he was going to throw the chick -- the kitchen sink at him.

Q. And did Drew plead guilty?

A. Yes.

Q. And that was also caused some publicity in the case?

A. Yes, sir.

Q. How did you respond to this publicity?

A. Well, as it went on and on, there's talk in the street, the reason Drew Fairchild hasn't, his case hasn't been disposed of, it was intimated that I had paid somebody off.

Q. You received that information?

A. Yeah, I received that information.

Q. How did that make you feel?

A. I was bitter.

Q. Did anyone contact you about money?

A. Yes.

Q. And who was that?

A. Bob Royals.

Q. And is that the former airport manager with Drew?

A. Yes.

Q. To your knowledge was Royals involved with the drug smuggling at Hattiesburg airport, along with Drew?

A. My son said he was and of course I believe he was, and I understand he was out there the night that the plane come in some way.

Q. Was he prosecuted by anybody at that point?

A. No.

Q. What conversations did you have with Bob Royals?

A. Well, he would hint for money and, hint for money, and then the last time he didn't hint, he just hit me right in the face with it, you know.

Q. How do you mean?

A. He said me and Bill Porter went over to see Joe Crone yesterday and on the way back, Bill Porter says if Drew will get up off his money, he'd come clear of this thing. Royals says, well, Drew don't have no money. And he said, well, his old man's got it. And he said yeah, but that's his, it's not Drew's. He says, well, if his old man had knew his son got his tail in the crack, he'd get up off his money. And I said, Bob, I got your message, loud and clear, but the answer is not no, it's hell no.

Q. What was his message as far as you read it?

A. That somebody's trying to blackmail me.

Q. What was your state of mind at that moment? What were you thinking about Drew's case?

A. Well, it just been dragged on and dragged on 'til, and I was just thoroughly disgusted.

Q. And what did you do?

A. Well, I told John Baltar to go to George Phillips and then, in my opinion, I was trying to be blackmailed and I just --

Q. Is that what you did immediately?

A. The best I remember it was. But -- best I remember it. It might have been a little while later, but.

Q. All right. Mr. Fairchild, when did you have this conversation with Royals?

A. Well, these dates I just can't remember, now I can remember him coming out there sitting, me saying just what I did, but I don't keep no diary at the office and I just don't try to remember them dates.

Q. Do you know the gentleman seated at counsel table behind Mr. Fawer, Judge Nixon?

A. Yeah.

Q. How do you know him?

A. He's the federal judge.

Q. And how do you know him? Do you have a personal relationship with him?

A. Yes.

Q. Did you ever seek his help after Bob Royals came to visit you?

A. Yes.

Q. And when and under what circumstances?

A. Something come up about Drew's case and that, that I was real mad and I either got ahold of the Judge or asked Carroll to and, but he come out to my office, Carroll brought him out there.

Q. Is that the first time you had ever seen the judge at your office?

A. No.

Q. Did you have a prior relationship with the judge?

A. Yes.

Q. Why did you want to see the judge?

A. Drew said that when we paid the full 10,000, everything would be over, and that was supposed to come with Bud Holmes. And I just wanted Bud Holmes to do what he promised to do.

Q. So what was Judge Nixon to do?

A. Well, he had, I told him what had happened and I said, now, if they will go ahead and prosecute Bob Royals, they won't hear a damn word out of me. He's guilty and my son's guilty, but I just don't like them picking on my son because I got money. And so that's what I told the judge.

Q. Why did you tell Judge Nixon that?

A. Well, I knew him and Bud Holmes was friends and he previously said, he come out there one time, thanked me for putting him in a good oil deal and he said if I can ever help you, I will; and if I can't, I'll tell you.

(Discussion at side bar, not reported.)

BY MR. WEINGARTEN:

Q. Mr. Fairchild, when I last was posing questions to you, you were describing a visit Judge Nixon made to your office, is that correct?

A. Yes.

Q. Just to make sure that we understand, what prompted that visit?

A. There was something in the paper, something come up with Drew's trial, and I don't remember what it was, but maybe that he wanted Drew to, to come down there. I don't remember what it was, but.

A. It was a good reason, but it just don't come to my mind now.

Q. Okay, what did you do? Why did you seek out Judge Nixon?

A. Well, he's good friends with Bud Holmes.

Q. How did you know that?

A. Well, street talk, street talk, and Bud had told me, Bud had told me how close he was to him.

Q. Did you want something from Judge Nixon at the time?

A. I wanted him to get Bud Holmes to do what he had promised to do, yeah.

Q. So did Judge Nixon come to your office?

A. Yes.

Q. Did you have a conversation?

A. Yes.

Q. What was the nature of the conversation?

A. I told him what it was that they was trying to blackmail me and I wasn't going to be blackmailed, and that, what Bud had promised to do, and I said now if they will go ahead and prosecute Bob Royals, won't hear a word, because he's guilty just like my son.

Q. Was it the visit by Royals that triggered the visit --

A. I think that was, yeah. I think that was the visit by Royals.

Q. Was it the Royals matter that particularly angered you?

A. Well, it did, yeah, sure it did.

Q. Why did you use the word blackmailing. Who had been blackmailing you?

A. I couldn't figure out nothing else, thing had drug on and on and on, you just tell, work with people for fifty years like I have, you just learn something about human beings.

Q. How did Judge Nixon respond to you?

A. In my office I don't recall him saying anything.

Q. Did he just sit there and listen to you?

A. Well, he kind of, yeah, kind of shook his head, maybe grunted a little or something or another.

Q. You remember no conversation?

A. Well, I was doing all the talking. He might have said something, but, and probably did, but I don't remember.

Q. Approximately how long did the meeting take?

A. Oh, I'd say fifteen or twenty minutes.

Q. Okay. Did you have subsequent contact with Judge Nixon about your meeting?

A. He called me that night just about seven o'clock.

Q. What did he say?

A. He said Wiley, you know that man we was talking to this evening? I said yeah. He said well, I'm in his home, and everything going to be taken care of to your satisfaction. I says thank you, I appreciate that.

Q. Did you recognize the voice at the other end?

A. Yeah.

Q. Did he identify himself?

A. No.

Q. How did you recognize his voice?

A. I just can recognize voices.

Q. What followed that conversation with Judge Nixon?

A. Bud got on the phone, Bud Holmes.

Q. And did you recognize his voice?

A. Oh, yeah. Yeah.

Q. What did he say to you?

A. He said Wiley, when this man asks me to do something, I don't ask no questions, I just go ahead and do it.

Q. What did you say?

A. I said thank you, Bud, I appreciate that.

Q. Was there any further conversation?

A. No.

Q. What's the next thing that you recall happening in your son's case?

A. Well, it was later passed to the file.

Q. Okay. Do you recall when this conversation was, do you have a precise date?

A. No.

Q. Did you mark it down in a calendar?

A. No, I don't keep no diary.

Q. Did it occur before or after the case was passed to files?

A. It occurred before the case was passed to the files.

Q. Are you certain of that?

A. Yes, that's what I was mad about, because it wasn't passed to the files like Bud had promised to do it.

Q. Okay. You remember the conversation well, at least you're testifying with some specificity to the words of Judge Nixon and to the words of Bud Holmes, is that true?

A. Yes.

MR. FAWER: I would appreciate it if questions were posed as opposed to argument. I would expect more of even this prosecutor.

MR. WEINGARTEN: Your Honor, I am going to object to the constant editorializing of counsel. It started yesterday, it has not stopped. That is not proper conduct from an attorney and he knows it.

MR. FAWER: You were the one who asked the questions as an argument in an effort to tie down that which you are uncertain of.

MR. WEINGARTEN: That's editorializing if --

MR. FAWER: It months assuredly is.

MR. WEINGARTEN: I'd ask --

THE COURT: Gentlemen, wait a minute.

MR. FAWER: I ask the Court to tell counsel not to summarize his case where he feels he's in need of doing so in the middle of interrogation.

THE COURT: Mr. Fawer, if I applied the same rule to you, you wouldn't have been able to ask any questions the last two days.

(Laughter.)

MR. FAWER: I would accept both the --

THE COURT: All right.

MR. FAWER: The sense of Your Honor's remark and the humor of it. I suggest when I ask questions it is on cross-examination, I may lead a witness, he may not do this as his witness.

THE COURT: I understand.

MR. WEINGARTEN: Can I make one more point?

MR. FAWER: Do we wish to come to the bench?

MR. WEINGARTEN: Yes.

(At the bench:)

MR. WEINGARTEN: Government requests that speaking objections be made at the bench.

MR. FAWER: I object to that objection.

THE COURT: I don't care where you make your objections.

MR. WEINGARTEN: I don't like speaking objections made -- they have no business in court.

MR. FAWER: You've been doing it.

MR. WEINGARTEN: I have not been doing it.

MR. FAWER: You knew you asked an improper question, I had a right to object.

MR. WEINGARTEN: You made a speaking objection.

MR. FAWER: I objected to your question.

MR. WEINGARTEN: I want all speaking objections made at the bench.

THE COURT: I'm not going to make that rule. Let's go ahead.

(Open court:)

BY MR. WEINGARTEN:

Q. Do you remember this call from Judge Nixon and Bud Holmes to your house?

A. Yes.

MR. FAWER: Excuse me, Your Honor. I would object. The question is, does he remember it. He has just testified to it.

MR. WEINGARTEN: That is the --

MR. FAWER: Excuse me, may I make my objection? He has just asked the man did he receive a call. He testified to what the Judge ostensibly said, what Bud Holmes said, now he's asking do you remember it. I suggest it's an improper question.

THE COURT: Overruled. Proceed.

BY MR. WEINGARTEN:

Q. Do you recall the call, sir?

A. Yes.

Q. Do you recall it well?

A. Yes.

Q. Why?

A. Well, it was, it made me happy. I thought my son's case was going to be done away with once and for all.

Q. How did you find out that the case was passed to files?

A. Carroll Ingram, best I remember, brought me a copy of it where it had been passed to the files, and brought it out to the office, I believe he said something about I got you a Christmas present, something, I was real happy. Called Drew's wife, she was happy too, come out there, got a copy of it.

Q. Do you recall talking to Ingram about the telephone call from the farm?

A. Yes.

MR. WEINGARTEN: Judge, I suggest that would be a good time to stop.

THE COURT: All right. We'll recess until nine o'clock in the morning.

(Recess.)

(End of Volume 4.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V.

CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 30, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 5

DAVID A. SCOTT
COURT REPORTER
Post Office Box 2202
Jackson, Mississippi 39225-2202

JANET CLEMENS
COURT REPORTER
Post Office Box 517
Oxford, Mississippi 38655

THE COURT: Proceed, Mr. Weingarten.

MR. WEINGARTEN: Thank you, Your Honor.

BY MR. WEINGARTEN:

Q. Good morning, Mr. Fairchild.

A. Good morning.

Q. Mr. Fairchild, I would like to pick up where we left off last night. I believe you had testified that you had put Judge Nixon into a deal. Please begin there, sir, and explain to the ladies and gentlemen of the jury, what you were talking about, what kind of deal.

A. It was some royalties in three oil wells.

Q. And what was your first contact with this deal?

A. Carroll Ingram come to my office, asked me to put the Judge in a good oil deal.

Q. Did you know the Judge personally at that time?

A. To the best of my memory, I hadn't met him.

Q. All right. Had you ever heard of him?

A. Oh, yeah, yes.

Q. Did Carroll Ingram indicate why you should put him into a good good oil deal?

A. Yes, said he had a bunch of kids, bunch of children who was in school, some of them was getting ready to go to college.

Q. And what?

A. And he was having, he was a -- He was needing to be in a good deal.

Q. Do you remember when this was?

A. No.

Q. You don't have any idea?

A. I believe it was about 1980.

Q. Do you remember when in 1980?

A. No.

Q. Can you associate it to any event?

A. Oh, my son, Drew's case was pending in the federal court.

Q. When the first approach came?

A. Yes.

Q. Now, do you have records that reflect that?

A. I didn't make no record of when Carroll come out there and asked me to.

Q. So this is just a recollection of yours?

A. Yes.

Q. Are you certain about it?

A. Yes.

Q. You are?

A. Yes.

Q. Okay. What was your reaction to Carroll's request?

A. Well, I decided when he asked me to, to put him in a deal.

Q. Why?

A. Because he was a influential man.

Q. Why was that a consideration for you?

A. I believed if there was ever a time he could help me he would.

Q. Did you act immediately when Mr. Ingram made the request? Did you immediately put Judge Nixon into a deal?

A. No.

Q. Why not?

A. I didn't, couldn't decide what oil wells to put him in at that time.

Q. Did you have an idea about certain wells at that time?

A. Well, then or shortly after then, yes.

Q. What were your ideas? What were you thinking?

A. Well, I wanted to put him in some deals that were good.

Q. Did you fix on any particular wells?

A. I picked out three wells.

Q. All right. What wells were they?

A. It's a Wilkie well in Mobile County and L. D. Ross in Covington County and Rogers in Marion County.

Q. All right. Start with the Wilkie well and tell the ladies and gentlemen of the jury, why you selected that particular well?

A. I selected them, that because I thought it was a good well.

Q. And why?

A. Well, you just -- you just -- you get the information and on a well and the logs and the core and you have an idea that a, that it's going to be a good well.

Q. Were these wells producing at the time or were these simply interests that you had in anticipation of production?

A. It was, we had an interest in the three wells and I think I told Carroll the three wells, but the three wells that I was going to put him in, and, and then, and that's the three wells that we wound up putting him in.

Q. Who selected the wells?

A. I did.

Q. Did you negotiate with anybody about the wells?

A. No.

Q. Did you discuss other wells with anybody?

A. Not at that time.

Q. All right. Did you discuss whether or not you would put Judge Nixon into a deal with these three wells with Judge Nixon?

A. No.

Q. Did you have any discussions with Judge Nixon at all at this time?

A. I don't remember having any discussion with him.

Q. All right. Did a period of time pass between when you told Carroll Ingram that you were thinking about these three wells and when documents were actually prepared?

A. Repeat the question.

Q. All right. Take from the time you told Carroll Ingram that you were thinking about the three wells, --

A. Yes.

Q. -- did a period of time pass between that moment and when the documents were actually prepared?

A. Yes.

Q. Do you know how long a period of time?

A. No.

Q. Can you make an intelligent guess?

MR. FAWER: Do we really want guesses in a courtroom.

BY MR. WEINGARTEN:

Q. What's your best estimate?

A. Well, it would just be a wild guess.

Q. Okay. Then don't do it.

MR. WEINGARTEN: May I have Government's Exhibit 8, 9 and 10.

BY MR. WEINGARTEN:

Q. I hand you, Mr. Fairchild, what's been marked Government's Exhibit 8, 9 and 10 and ask you to take a look at them. What are those exhibits, sir?

A. These are assignments that we, that I signed and give to Judge Nixon.

Q. All right. When are they dated?

A. February 25, 81.

Q. And when were they prepared?

A. When were these prepared?

Q. Yes, sir.

A. Well, I don't know whether these is the backdated ones or --

Oh, these, I think they was prepared about a year later than this.

MR. WEINGARTEN: Can I have 12, 13 and 14, Government's Exhibits, please.

BY MR. WEINGARTEN:

Q. Mr. Fairchild, take a look at Government's Exhibit 12, 13 and 14. What are Government's Exhibits 12, 13 and 14?

A. February the 25, 1980.

Q. Are they also royalty deeds?

A. Yeah.

Q. Are they identical with 8, 9 and 10?

A. Except the dates, yeah.

Q. What happened? Which deeds were prepared first?

A. The one in February of 80 -- February of, February of 81.

Q. And do you know who prepared the February 81 deeds?

A. Skip Jarvis or Carroll Ingram, one.

Q. Were they prepared in your office, do you know?

A. If skip prepared them, they would be in my office.

Q. All right. Did you sign those deeds?

A. Yes.

Q. And are they dated by the signature?

A. Yes.

Q. And again for the first three, what's the dates on those?

A. February 25 --

Q. Right here, 9 --

A. Yeah.

Q. 8, 9 and 10?

A. 25 of February 81.

Q. Is there a grantee named in 8, 9 and 10?

A. Yeah, I'm sure there is, but I've got poor eyesight, but I don't see it.

Q. Take your time, Mr. Fairchild.

Q. You find a grantee named in any of the 1981 deeds?

A. No.

Q. Were those deeds prepared pursuant to your instructions?

A. To my instructions or Carroll Ingram's one.

Q. Why to your knowledge was no grantee put in the 81 deed?

A. Carroll, best of my remembering, he said he didn't know what name they wanted to be put in.

Q. Okay. What happened to the 1981 deeds? Were they given to Judge Nixon?

A. They were sent, to the best of my memory, they were sent to Carroll Ingram.

Q. And what happened to them?

A. He sent them back and said they need to be backdated.

Q. Did did he say why?

A. He said federal judge had to make disclosures, and it would look better if it was backdated, that's the best of my recollection what he said.

Q. And what did you do when he said that?

A. I would have given them to Skip Jarvis.

Q. And did you give him any instructions?

A. Well, Carroll had already told him, see.

Q. To backdate them?

A. To backdate them. He didn't need no instructions from me, I knew he was going to do it.

Q. Were the deeds in fact backdated?

A. Yes.

Q. And is that the result of Government Exhibit 12, 13, and 14?

A. Yes.

Q. And did you sign those deeds?

A. Yes.

Q. And was a grantee named in those deeds?

A. Yes, Walter L. Nixon, Jr.

Q. Pardon me?

A. Yes, Walter L. Nixon, Jr.

Q. And did you sign the deeds yourself?

A. Yes.

Q. And did you sign it underneath an indication, or a line that says, witness the signature of grantor, this 25th day of February, 1980?

A. Yes.

Q. Did you sign those documents on February 25, 1980?

A. No, these are the ones that were backdated and it was in 81 was when, it was 81 when I signed them.

Q. I'm sorry, did I cut you off? Were you about to say something?

A. It was in 81 when I signed them, because when the first one was made up it was February 81, and then the ones that he sent back out there and said backdate them, and these is the ones that was backdated.

Q. All right. To your knowledge when is the mineral royalty deal like like the one we're --

MR. FAWER: Excuse me. Is this a -- is this an expert opinion from a lawyer?

MR. WEINGARTEN: His knowledge.

MR. FAWER: I would object.

THE COURT: Overruled. He's an expert in the business, he'll have some knowledge about it.

MR. FAWER: He may have some knowledge, but that doesn't give him --.

BY MR. WEINGARTEN:

Q. What is your understanding of when a mineral royalty deal like the one we're talking about is legal?

A. When the person receives, got it in hand.

Q. When did Judge Nixon receive the deeds we're talking about?

A. Well, Carroll received them after February the 25th, 81.

Q. By those deeds, when was Judge Nixon to start receiving money?

A. From the first day of runs.

Q. What does that mean, sir?

A. Well, that's something you put in there, it's customary to put in deals to, from the first date the well starts producing.

Q. Were any of those wells producing in February 81?

A. Yes, I think they all were.

Q. What was the practical effect as you understand it, of backdating those deeds?

A. What was the practical effect? Well, it was backdated, you'd have to ask Carroll Ingram that, he's the one asked me t backdate them.

Q. As you understand the oil business, what was the practical effect of what you did?

A. I don't know how to answer that question.

Q. Did the backdating effect when Judge Nixon was to be paid?

A. Was the backdating what?

Q. Did the backdating effect when Judge Nixon was to get paid

A. It was the intent all the time for him to get paid for the first day of runs.

Q. And did that change at all with the backdating?

A. Well, that's done, that is done in the oil business, it's common to backdate --

Q. Why?

A. -- things. Just to get from the first date of runs.

Q. Is it not fair to say, though, that Judge Nixon was to get paid from the first day of runs with the 81 deed, and the 80 deeds?

MR. FAWER: Could we go back to direct examination a opposed to the leading questions? Would you agree that's what that is?

MR. WEINGARTEN: I ask for a ruling.

MR. FAWER: Is it fair to say is by definition a leading question.

MR. WEINGARTEN: Your Honor, may I pursue my questioning as I'm doing?

MR. FAWER: I would object to the form of the question.

THE COURT: Overruled.

BY MR. WEINGARTEN:

Q. Is it not fair to say, Mr. Fairchild, that Judge Nixon was to get paid from the first runs with the 80 documents and the 81 documents?

A. Yes.

Q. So why was there backdating?

A. Because Carroll Ingram asked us to backdate them.

Q. From your understanding of the oil business, did the backdating have any practical effect at all on the deal that you were contemplating with Judge Nixon?

A. Repeat the question now?

Q. From your understanding of the business, what changed between you and Judge Nixon when you backdated those deeds?

A. Well, it would have been the same effect if he'd have got the -- got that from the first day of runs, he would have got paid from the first day of runs on either instrument.

Q. From your understanding, when was that deal legally effective?

MR. FAWER: I think that was asked and answered, I would object. Your Honor had ruled on the question, he was allowed to ask it an it was answered.

MR. WEINGARTEN: I think he can clarify that.

MR. FAWER: Excuse me. He --

THE COURT: I'm sustain it. He already said when he received the deeds they were effective.

MR. WEINGARTEN: Thank you, Your Honor.

BY MR. WEINGARTEN:

Q. Mr. Fairchild, in your view, in your opinion, what was the value of the three mineral royalty interests that are represented in Government's Exhibit 8, 9, and 10?

MR. FAWER: Could we have an idea of some date, day?

BY MR. WEINGARTEN:

Q. As of February 25, 1981?

A. Oh, approximately twenty-six, twenty-eight thousand dollars.

Q. How do you come up with that figure?

A. Well, it's just a judgment.

Q. And a judgment based on what?

A. On all the information I had about the well.

Q. Were the wells worth more or less than that in your judgment on February 25, 1980?

A. They were worth less.

Q. Why would that be?

A. Well, the best of my memory they had been in production and it's, you know, they had been producing.

Q. Would you have had more or less information about these wells in 1981 than in 1980?

A. We had more in 1981.

Q. Do you recall what you bought those mineral interests for originally?

A. Two hundred dollars a lease acre.

Q. Do you recall when you would have purchased them?

A. No, but some two or three years earlier.

Q. And would the value of the royalty interests have changed over that two or three year period?

A. Yes.

Q. Why?

A. Well, a lease acre is equivalent to seven royalty acres, and I bought the seven royalty acres for two hundred dollars an acre, best I remember. And that was all it was worth back at that time.

Q. Why would it be worth more later?

A. Well, because wells was drilled around there, and the closer the lease gets to production the more it's worth.

Q. Were you out to make money yourself on this deal with Judge Nixon?

A. As a general rule, I don't deal in buying and selling for profits. I buy something to keep it.

Q. And what about when you sell something?

A. Huh?

Q. What about when you sell something?

A. Well, when I sell something, I want to get something, of course, for it, and something, something where it won't look like a hundred per cent gift.

Q. Was that the situation in this case, Mr. Fairchild?

A. I'd say yes.

Q. What was done with the 1980 deed?

A. I don't know.

Q. Were they recorded?

A. I don't remember.

Q. Did you have anything to do with the recordation of the deeds?

A. No.

Q. Pursuant to your agreement, or pursuant to the deal with Judge Nixon, who was to pay Judge Nixon when the royalties matured, when they were ready for payment?

A. Well, the construction company was responsible on the Wilkie well and Fairchild Windham on the other two wells.

Q. Why was that?

A. Well, because we had the working interest in the wells, and we have to pay our own royalty owners.

Q. Did you make any effort to get the oil companies themselves to pay Judge Nixon?

A. Yes.

Q. What efforts did you make?

A. I told Carroll Ingram to try to get them to, but we do that in all transactions where we buy something, two of us together, we try to get them to pay all the royalty just to keep from having to do that work in the office.

Q. Were you successful in your efforts?

A. No.

Q. And what ultimately happened?

A. We had to pay them ourselves.

Q. And did you in fact do that?

A. Yes.

Q. And were checks issued from your office to Judge Nixon?

A. Yes.

Q. I hand you, Mr. Fairchild, what's been marked Government Exhibit 18 and 19, and ask you, sir, if you can identify them?

A. Yes, that's some royalties that we paid Judge Nixon.

Q. Now I note there are two sets of checks, is that correct?

A. Yes, sir.

Q. And I note that there are three royalty interests passed. Why is there a discrepancy?

A. I don't understand the question.

Q. What arrangement was made for payment to Judge Nixon in your office?

A. What arrangement was made for us to pay Judge Nixon?

Q. Yes?

A. When we get paid from the purchaser, we turn around and pay all the royalty owners.

Q. All right. Why are there two different sets of checks?

A. Well, one of them is Fairchild Windham and the other is W. R. Fairchild Construction Company.

Q. Fairchild Windham includes what mineral royalty interest, what well is covered by that check?

A. Ellzey Ross.

Q. What about the other check?

A. The Wilkie well I assume and the Rogers well.

Q. Why would there be a difference?

A. Huh?

Q. Why was there a difference in the arrangement with Judge Nixon?

A. Why was there a difference in --

Q. Why are there two different kinds of checks?

A. Well, there are different ownership in Fairchild Windham than there were in Fairchild Construction.

Q. One company owned one well and the other company owned interests in the other two wells?

A. Yes.

MR. WEINGARTEN: We move into evidence Government's 19 and 20.

MR. FAWER: No objection.

MR. WEINGARTEN: Starting with -- we move into evidence 17 and 18.

MR. FAWER: Still no objection.

(Exhibit G-17 marked.)

(Exhibit G-18 marked.)

BY MR. WEINGARTEN:

Q. Start with 18. I believe that's the other set. What is the date of the first check?

A. February 19, 82.

Q. What is the amount?

A. 5,941.01.

Q. And who is the check made out to?

A. Walter L. Nixon, Jr.

Q. Who makes out the checks?

A. Billie Riley.

Q. Under whose authorization?

A. Mine.

Q. Okay. Now, please proceed. Just give the date -- are all the checks that follow, are they all made out to Judge Nixon?

MR. FAWER: Your Honor, just in order to save time, we've already stipulated, there is a listing of the checks by dates, amounts. We will stipulate there is every check made payable to Judge Nixon in the amount in which it states on it on the dates -- I think in fact the government turned over a list to us with it. To sit here and listen to the witness read them off seems a little pointless. I'm willing to do it, I don't think that there is any issue about that. The checks are shown deposited to Judge Nixon's account from both of these different companies.

MR. WEINGARTEN: I think the jury should hear.

MR. FAWER: Withdraw my objection.

THE COURT: Okay.

BY MR. WEINGARTEN:

Q. Just give the dates and the amounts of the checks in Government Exhibit 18?

A. The next date is, was March 3, 1071.29. March 26, 1103.88. And May 82, 1060.70. June 28, 974 thousand --

MR. FAWER: 974.

THE WITNESS: 974.69. July 23rd, 1028.70. August 24, 1061.61. September 9th, 82, 10 thousand.

BY MR. WEINGARTEN:

Q. Say that again.

A. 10,093.40.

Q. Let me stop you there. Is it fair to say that amount is considerably larger than the amounts you previously read?

MR. FAWER: I'll stipulate that.

THE WITNESS:

A. Yeah.

BY MR. WEINGARTEN:

Q. Why is that, sir?

A. Well, that's the way we received the money.

Q. Do you recall anything specific happening that caused such a large check then?

A. I remember us getting one check for 4 hundred something thousand but if that would be a Billy Riley or our controller could explain it easily.

Q. All right, sir. You don't have a specific recollection of an event that would have caused that?

A. No.

Q. All right. Please continue.

A. September 29, 2 thousand 216 dollars and 85 cents, October 25, one thousand five hundred and 36 dollars and 34 cents, November the 29, 82, one thousand 7 hundred 40 dollars and 69 cents, December 10, 82, one thousand 6 hundred 34 dollars and 26 cents, January 26, 83, one thousand one hundred 13 49, February 28, 83, one thousand 316.22, March 28, 83, one thousand 736.78, April 22, 83, one thousand 327.38, May 23, one thousand 248.20, June 22, 83, one thousand 4 hundred 49.87, July 25, 9 hundred 38 dollars and 2 cents; August 26, 800 and 78 dollars and 9 cents, September 83, 9 hundred 25 dollars and 20 cents, November eleven 83, five hundred 95 dollars and five cents, November 30, 83, five 72.49, December 28, 813 dollars and 70 cents, January 27, 84, 891 dollars and 61 cents, February 29, 84, 783.82, March 20, 84, 532.26; April 27, 564.88, May 24, 84, 726.21, July 27, 84, 928.34, July 30, 975.18, August 29, 927.13, September 28, 849.45, October 23, 84, 705.20, November 28, 84, 964.76. December 31, 84, a thousand 56.75, January 28, 85, a thousand 79.37 — I can't read this, it's in 85, it would have been the next month, a thousand 53.16, and this is in 85 and I can't read it. It looks like maybe March 20, it's smeared up, 9 hundred 91 dollars. April 22, 85, 963.74, May 24, 85, 896.55, July 1, 299.19, and August 22, 85, 581.05.

Q. Mr. Fairchild, those checks, I think you said, cover the Wilkie and the Rogers wells. Is that correct?

A. Yeah.

Q. What are the state of those wells now? Are they still producing?

A. Yes.

Q. I noted that the numbers began to diminish as you read them. Did you pick that up?

A. Yes.

Q. And why was that?

A. They have unitized that field and when you unitize a field, you, they, you just get an interest in all of the well, and Texas Getty was operating this well, and I think they had one percent of the well or two percent or something and they just purposely cut the well down to where we getting about, well, where we getting 35 thousand a month at one time, now we getting about 13, 14 thousand.

Q. Are you challenging that in any way?

A. It's in court.

Q. And if you're successful, what will happen?

A. We will get what this one well's producing.

Q. If you're successful, would Judge Nixon benefit from that victory?

A. Yes.

Q. Do you have any idea of the life expectancy of either -- Do you know or do you have an opinion about the life expectancy of the Wilkie well or the Rogers well?

A. I've been fooled so many times on the life of them, the Wilkie well was supposed to last a long, long time.

Q. In the oil business, what does that mean?

A. Well, 20 years.

Q. Okay. About how the other well, the Rogers well? What's your expectation?

A. Oh, 12 or 15.

Q. All right. Is it fair to say the oil business is risky?

A. Yes, very risky.

Q. And people often select wells that don't produce. Is that correct?

A. Yes.

Q. Why did you select three wells in this instance?

A. Well, because the oil well was risky and I wanted it to be a good deal and put him in three and the odd are way against three wells going bad.

Q. Of the three wells you selected, were all three wells good?

A. The L. D. Ross is not such a good well.

Q. Is that well, are the interests in that well represented by Government's Exhibit 19?

A. Yes.

Q. Go through those checks the way you went through the other checks.

A. February 18, 82, 4 hundred 64 dollars and 25 cents, April 6, 82, one dollar and 12 cents, June 7, 82, 14 -- a hundred and 43 dollars and 51 cents. September 15, eleven dollars and 92 cents. January 4, 82, five dollars 50 cents, February 14, 83, 3 hundred 72 dollars and 65 cents, May 9, 83, 3 dollars and 69 cents. July 13, 83, 4 dollars and 27 cents, February 13, a hundred and 56.27, February 10, 84, 89 dollars and 81 cents, April 18, 84, five dollars and 48 cents, and July of 84, 4 hundred 28 dollars and 56 cents, October 4, 84, nine dollars and 92 cents, December 31, 84 -- 2 dollars 29 cents, February

12, one hundred 77.13, April 153 dollars and 75 cents and May 85, 246.51, May 23, 85, 122.36, and August 6, 85, five dollars and 55 cents.

Q. What happened with that well? Do you know?

A. I think it was mechanical trouble that never did get it opened it down there in the producing zone.

Q. Is there any expectation for improvement, as far as you know?

A. No.

Q. What arrangements were made that you know about for Judge Nixon to pay for those interests?

A. Carroll Ingram handled that. I don't remember anything about that.

Q. Did you fix a price?

A. Huh?

Q. Did you fix a price?

A. I could have, could have, but I don't remember, but in all probability somebody would say here's what we have got down there, but Carroll Ingram was handling it and I was depending on him to, you know.

Q. Were you involved in any negotiations with Judge Nixon about the price?

A. No.

Q. Were you involved in any discussions with Judge Nixon about the price?

A. No.

Q. Were you involved in any negotiations with Judge Nixon about interest rates?

A. No.

Q. About collateral?

A. No.

MR. WEINGARTEN: Government's Exhibit 15 16 and 17.

BY MR. WEINGARTEN:

Q. I hand you Government's Exhibits 15, 16 and 17, sir, and ask you if you have ever seen them?

A. I probably saw them but I don't recall seeing them, no.

Q. Do you normally take notes back for consideration of mineral royalty interests that you sell?

A. What?

Q. Do you normally take paperback or do you take notes back for the consideration of mineral royalty interests that you sell?

A. Well, like I say, I don't deal in this and I don't deal in this, and just in some cases and Skip Jarvis and Carroll Ingram handled this.

Q. Well, do you recall in all your years in the oil and gas business, ever taking a note back for consideration in a sale of a mineral royalty interest?

A. No, I hadn't. I don't recall one. I could have, but I just don't remember it if I have.

Q. Do you recall the first time you met Judge Nixon?

A. The first time that I remember it, he come by the office.

Q. And what happened?

A. He thanked me for putting him in the oil deal.

Q. Was he alone or was he with someone else?

A. Carroll Ingram brought him out there.

Q. Where in your office did you meet?

A. In my office.

Q. Was there ever a time you were alone with the judge?

MR. FAWER: Excuse me, could we have some dating of this incident?

BY MR. WEINGARTEN:

Q. Do you have a date, Mr. Fairchild, can you tell us --

A. No.

Q. When would this have taken place in connection with the deal that we have talked about?

A. It would have been, it would have been Judge Nixon started receiving some checks.

Q. How do you know that?

A. Well, he thanked me for putting him in the deal.

Q. Well, how do you know about checks?

A. Well, I assume that he got the checks in and knew he had been put in a good deal.

Q. All right. What do you recall about the meeting?

A. Well, he thanked me for putting him in there and we just had a friendly conversation and he says if I can ever help you, I will and if I can't, I'll just tell you I can't.

Q. Was Carroll Ingram present during that conversation?

A. No.

Q. Where was he?

A. Well, he went back in the coffee -- No, I don't -- I don't know. I think he went back in the coffee room and one of my secretaries carried him back to the office.

Q. Did Judge Nixon mention to you that he had received checks?

A. No.

Q. Why do you date the meeting to the receipt of the checks?

A. Well, because he thanked me for putting him in a deal.

Q. When was the deal effective?

A. From the first day of the production on the wells.

Q. When did Judge Nixon, to your knowledge, receive the finished documents?

A. Well, I give them to Carroll Ingram. I don't have any idea, so he sent signed them and put them on record and I don't know what he done with them after that.

Q. Okay. When was the next time you saw Judge Nixon?

A. Oh, well, it was some time after that that something happened in my sons case that upset me and I asked Carroll to get ahold of him, that I wanted to talk to him. And he come out there --

Q. Is that --

A. -- or Carroll brought him out there, one.

Q. Is that the meeting that you discussed yesterday?

A. Yes.

Q. Okay. Did you ever talk to Judge Nixon about other deals that you might put him in?

A. Oh, I mentioned one other deal that I was considering putting him in.

Q. What deal was that?

A. Board of Education well in Simpson County.

Q. And did you in fact put Judge Nixon in another deal?

A. No.

Q. Why not?

A. Well, that well turned out to be no good.

Q. Did Judge Nixon indicate interest in more deals with you?

A. Well, we discussed it at a cocktail party one night and it was brought up and I was the one that told him I would, I would think about putting him in another deal.

Q. What was Judge Nixon's response?

A. Oh, he was friendly. I mean, we had a good conversation.

Q. Okay.

A. And I was feeling no pain, I don't remember what went oh, everything, you know, but I do remember the conversation.

Q. All right. Mr. Fairchild, did there come a time in 1984 when the federal authorities came and talked to you?

A. Yes.

Q. Do you recall when that was?

A. I don't recall no dates, no.

Q. Did the FBI discuss with you the deal that you have discussed today before this grand -- before this jury?

A. Yes.

Q. And how did you respond to the FBI?

MR. FAWER: Excuse me, Your Honor, I would object to this line of inquiry. Is he seeking to impeach his own witness? At this point I submit what he said to the FBI is not probative of the events in this case. What he said on a previous occasion, I mean, I've allowed an awful lot of hearsay to come in without objection in terms of conversations, but here's he's being asked what he said on an occasion out of court with nonparticipants in this case and I would object strenuously, Your Honor.

THE COURT: What's the reason for asking that question?

MR. WEINGARTEN: Perhaps we should approach the bench.

THE COURT: Yes. (AT SIDE BAR:)

MR. WEINGARTEN: We intend to ask questions that are responsive to Mr. Fawer's cross-examination of Skip Jarvis and ask Mr. Fairchild about the meeting Jarvis had with him, so some of the things he said to him that were played on the tape and generally what his responses were to the FBI to explain what led up to his difficulty with the law.

MR. FAWER: Excuse me, Your Honor. His difficulty with the law is not part of his direct case. That may be probative but he's not on trial --

MR. WEINGARTEN: The court has already ruled on that.

MR. FAWER: Excuse me, I didn't interrupt you. -- the testimony of Jarvis, when he was put on the stand, now they put this witness on the stand and if he lied on other occasions, that may be something I bring out on cross-examination. Under the classical rules of evidence, to bring that out, if he wants to soften the impact, that would make it improper direct. He is simply -- I don't have any objection if he wants to bring out the man pled guilty. If he wants to bring that out, we had a discussion --

THE COURT: Is what he told in the grand jury different from what he said now?

MR. WEINGARTEN: Yes.

THE COURT: It is different?

MR. FAWER: Right. What he told Jarvis is different and what he told the grand jury is different.

THE COURT: Well, he can bring it out.

MR. FAWER: Thank you.

(Open court:)

BY MR. WEINGARTEN:

Q. Were you completely truthful with the FBI when they interviewed you, Mr. Fairchild?

A. No.

Q. Do you recall an occasion when Skip Jarvis came to visit you in your office around that time?

A. When he had the tape on, yeah.

Q. Did you know that Skip Jarvis was taped?

A. No.

Q. What was your feeling toward Skip Jarvis at that time?

A. I knew he wasn't out there, wasn't out there to help me.

Q. Nevertheless you did engage him in conversation, did you not?

A. Yes.

Q. Do you recall that meeting, Mr. Fairchild?

A. Yes.

Q. Do you recall telling him anything about why you put Judge Nixon into the deal?

MR. FAWER: Excuse me, I would object. I have no problem if he wants to say he was untruthful, whatever he wants. To go down chapter and verse would be improper direct examination with respect to what he said to Jarvis or Jarvis says to him, it is blatant hearsay in terms of a direct examination.

THE COURT: Overruled.

BY MR. WEINGARTEN:

Q. Do you recall a conversation with Mr. Jarvis about why you put Judge Nixon into a deal?

A. I don't remember the specific words, no.

Q. Then I ask for defense exhibit -- the transcript of the tape that was played yesterday, I'm not sure of the number.

MR. FAWER: 16.

MR. WEINGARTEN: 16, please.

BY MR. WEINGARTEN:

Q. I hand you Defense Exhibit 16, ask you to take a look on Page 31. There is underlining, don't look at that. Look at the portion of your conversation above that?

MR. FAWER: May we approach the bench, Your Honor?

THE COURT: Yes, sir.

(At the bench:)

MR. FAWER: Judge, I'm at a total loss to understand the rule of evidence, honest I am, under which this is going in. I have a fair understanding of the rules of evidence. He's, he is now being asked to explain why he lied on an earlier occasion, what his answers were on another occasion, unrelated to the participants in this case. We're talking about April of 1984. The events, this has nothing to do, it's Jarvis being sent in by the FBI. I cannot conceive of the rule of law that permits this interrogation. I can do it on cross, because I have a right to impeach. He's simply being allowed to, what Your Honor has allowed him to do is impeach in advance. On what theory?

THE COURT: Well, if he wants to bring out different statements that this man has made at different times about things, he can do it.

MR. FAWER: On what theory? On what rule of evidence, Judge? I'm perfectly willing to go along, but I know of no rule of law. He's simply trying to soften the cross.

THE COURT: No, he isn't.

MR. FAWER: What else is it?

THE COURT: I don't know what he's trying to do.

MR. FAWER: We ought to have a proffer then as to why he's doing it.

MR. WEINGARTEN: Mr. Fawer introduced this document, this tape as substantive evidence. Half the conversation is Wiley Fairchild. I have a right for Wiley Fairchild to explain what he said about a piece of evidence that's already before the jury.

MR. FAWER: Wait a minute. I introduced it through Jarvis on the cross-examination of Jarvis as to Jarvis. You didn't object.

MR. WEINGARTEN: Sure we did. We said it was hearsay.

MR. FAWER: Excuse me, you never objected.

MR. WEINGARTEN: Jan did.

MR. FAWER: The record is blank,.

MR. WEINGARTEN: We had an anticipatory objection, hearsay as far as Fairchild was concerned.

THE COURT: Have you made your record?

MR. FAWER: I've made my record.

THE COURT: Proceed.

(Open court:)

BY MR. WEINGARTEN:

Q. Do you recall now the conversation with Skip Jarvis?

A. Yes.

Q. Did you tell Jarvis why you put Judge Nixon in the deal?

A. Well, it explains here what the conversation was and what it meant, yeah.

Q. What did you tell Jarvis -- put that down. Put that transcript down. What do you recall telling Jarvis at that time?

A. That I'd rather put a judge, prosecuting attorney or something in a deal than somebody else.

Q. At that time were you telling Skip Jarvis the truth?

A. Yes.

Q. Now were you indicted by the federal grand jury in this matter?

A. Yes.

Q. And what were the charges lodged against you?

A. Giving a gratuity and perjury.

Q. Do you recall when you were indicted?

A. July I think it was.

MR. FAWER: We will stipulate it was September.

BY MR. WEINGARTEN:

Q. September, 1984?

A. Yeah.

Q. And what happened in your case, Mr. Fairchild?

A. Well, I had a -- I pleaded guilty to the gratuity and the government dropped the charge of perjury.

Q. Was there a plea agreement?

A. Yes.

Q. And was the plea agreement between you and the government?

A. Yes.

Q. Where did you plead guilty, do you recall?

A. In New Orleans.

Q. Do you recall what judge?

A. Judge Carr.

Q. And did there come a time for sentencing?

A. Yes.

Q. What sentence did you receive?

A. Two years with twenty-two months suspended, and two months in a halfway house.

Q. Where was the halfway house?

A. Jackson.

Q. Have you served your sentence?

A. Yes.

Q. What did the government recommend to Judge Carr as far as your sentence was concerned?

A. They recommended that I not be incarcerated.

Q. And Judge Carr did what?

A. He sentenced me to two years, suspended twenty-two months.

Q. How much time did you actually do?

A. Well, technically two months, but the way it was, come about I checked in on a Friday morning, got credit for Friday, Saturday, and Sunday, and there was some holidays and stuff in there. I think I spent 39 nights up there.

Q. In Jackson?

A. Yeah.

Q. Mr. Fairchild, when was the first time you told anybody about the phone call from Bud's farm about which you testified yesterday?

A. Repeat the question.

Q. When was the first time you told anybody about that call?

A. It was a day after that my attorneys had argued the motion before Judge Carr to dismiss the indictments, it was the day after that. It was in Wallace Gunn's office here in Hattiesburg.

Q. So it would have been after you were indicted?

A. Yeah. They argued to dismiss the indictments before Judge

Carr. He turned them down.

Q. All right. Up to that point had you told anyone on behalf of the government about that call?

A. No.

Q. After you disclosed the fact of the call to your lawyers, what happened? Don't say what anybody said, but what information -- what happened then?

A. Well, we discussed the terms in general.

Q. All right. Was the information passed to anybody about the call?

A. Well, I passed the information to my lawyers.

Q. And did your lawyers then pass the information to anybody?

A. Well, in the plea bargain, yeah.

Q. I just want to ask one or two questions about the call that I didn't ask yesterday and then I'll be through, Mr. Fairchild. You testified yesterday that you used the word blackmail in your conversation with Judge Nixon, is that correct?

A. Yes.

Q. Did you indicate to Judge Nixon who it was that you thought was blackmailing you?

A. Well, I thought it was Bud Holmes.

Q. Did you tell Judge Nixon that?

A. Yes.

Q. Did you make any request of Judge Nixon?

A. Well, he had said if he could ever help me he would, and I just told him about that I would be, in my opinion I was being blackmailed, and that I was damn tired of it, street talk was that the reason my son was got out because I had been, had paid somebody off, and --

Q. Did you make any request of the judge?

A. We had this conversation. I told them that Bob Royals was just as guilty as my son was, and if they would go on an indict and prosecute him, they wouldn't hear a word out of me. They wouldn't hear a word out of me. At that time then Drew and I wasn't on good terms, but I was just fed up with all this newspaper stuff, street talk, and I assumed that he would go on and talk to the --

Q. Talk to who?

A. To Bud Holmes.

Q. All right. The call you received that night, who got on the phone first?

A. Judge Nixon.

MR. WEINGARTEN: Thank you, Mr. Fairchild.

THE COURT: Let's take a short recess.

MR. FAWER: Before we do that, I think there is a single charge you might want to give the jury at this point (Indicating).

THE COURT: Guilty pleas entered by government witnesses may not under any circumstances be considered by you as proof of the guilt of Walter L. Nixon, Jr. A criminal defendant is entitled to have the issue of his guilt determined solely on the basis of the evidence admitted specifically against him and not upon whether a government witness pled guilty to the same or similar charges. You may take into account the guilty pleas of the government witnesses only when you are considering the credibility of that witness.

MR. FAWER: Thank you, Judge.

THE COURT: We'll recess for a short time.

(Recess.)

THE COURT: Proceed, Mr. Fawer.

MR. FAWER: Thank you, Judge.

CROSS-EXAMINATION

BY MR. FAWER:

Q. Good morning, Mr. Fairchild.

A. Good morning.

Q. We've met before, am I right?

A. Yes.

Q. Couple years ago?

A. Yes.

Q. It's been a long time?

A. Yeah.

/

Q. How are you feeling?

A. Fine.

Q. Good. Let me ask you something: let's go back, I'm going to try to ask you some questions so we can try to put some dates and flesh out some of the things that you have testified about, okay? If you don't understand any question I ask, just tell me and I'll try to repeat it or I'll rephrase it, okay? Any problem with that?

A. Except I don't remember dates, I don't keep no notes.

Q. That's really the first thing I wanted to ask you about. Really dates is, if there is one area you're really bad on, it's when different things happen, is that right? You're not good on dates?

A. I just don't try to remember them. I was trying to remember the important things as they happen, but I don't try to set out --

Q. We understand that. You don't keep calendars, you don't keep diaries, nobody says you have to, right?

A. That's right.

Q. You're just going to try to do the best you can in recalling, right?

A. Right.

Q. Let's go back in time. As I understand it, until 1979, let's just use that date, there had never been any publicity that was bad publicity in terms of the Fairchild name, is that right?

A. That's right.

Q. You had never been in any trouble at all?

A. No.

Q. Nobody who was associated with your company or your family had ever had any trouble of that sort, correct?

A. Right.

Q. And basically in fact the only kind of publicity you had ever had up to that time was the kind you would want to have, doing some good deeds, right?

A. Yes.

Q. You were proud of that?

A. Yes.

Q. And you were proud of the Fairchild name as well?

A. Yes.

Q. And you were proud of your kin as well, correct?

A. Pardon?

Q. People who were your kin who were doing well in various businesses?

A. Yes.

Q. Okay. You mentioned the name of a man named Carroll Ingram, correct?

A. Yes.

Q. He wasn't close kin, but he was kin to you, right?

A. Yes.

Q. And as I understand it, by 1979 he was an attorney in that period of time, he was a practicing attorney in Hattiesburg, right?

A. Yes.

Q. And in fact, how is he related, how is that relationship?

A. Oh, he's second cousin.

Q. Okay. And you watched the boy grow up?

A. Yes.

Q. You helped him when he was going to law school?

A. Yes.

Q. He was interested in politics pretty early in his career, right?

A. Yes.

Q. And you helped him some in politics?

A. Yes.

Q. And he was elected to the legislature of the State of Mississippi back in I think 1970, right?

A. I think that's when it was.

Q. Okay. And at a fairly young age?

A. Yes.

Q. And you helped him some in his reelection campaign as well, right?

A. Yes.

Q. There were times you had some differences about politics, but nothing terribly significant, right?

A. Right.

Q. You may have decided to back someone who he didn't back, but that's politics, right?

A. Yes.

Q. Okay. And in, late part of 1970's, he was a practicing attorney, had gone out on his own -- had he been with a firm at one time before he went out on his own?

A. Had he what?

Q. Had he practiced with --

A. Yes.

Q. Who had he practice with?

A. Zachary and Weldy.

Q. Okay. That was in the early 70's, is that correct?

A. Yes.

Q. You at some point had a falling out with the senior Zachary, is that right?

A. We had our differences, yes.

Q. In any event, Carroll left that firm and set up his own firm, right?

A. Yes.

Q. And you gave him some business, I mean you were a client of his, right?

A. Yes.

Q. Let me understand something. Later on there is some falling out between you and Carroll, but back in those days everything is fine, right?

A. Yes.

Q. And he, you looked to him for advice in certain areas where he knew what he was doing, correct?

A. Yes, he was my attorney, and I depended on him.

Q. Okay. And he was also somebody -- let me withdraw that. Let me ask you the question a different way. You were always interested, I think you indicated yourself, you were interested in the government of Mississippi, am I right?

A. Yes.

Q. Your attorney was a chairman of the judiciary committee of the Senate, am I right?

A. Yes.

Q. You kept abreast, you kept current on what was going on in the legislature, correct?

A. Yes.

Q. And you would stay, he was a contact for you, because you could find out perfectly properly what was going on in the halls of the legislature, right?

A. Yes.

Q. And as you say he was your attorney, and you relied on him?

A. Yes.

Q. Okay. And you had, you knew at the time, did you not, you yourself were not in public life, you were never elected to office, you never held public office, right?

A. Right.

Q. You were very successful by that time? By the late 70's you were a very successful and rather wealthy man, is that a fair statement?

A. Yes.

Q. Interested in politics?

A. Yes.

Q. Interested in government?

A. Yes.

Q. And interested in legislation that would help your business as well, correct?

A. Yeah, would help Mississippi and of course --

Q. And you -- Go ahead. I'm sorry.

A. Help Mississippi, and of course as long as it wasn't detrimental to my business, I would have tried to get something done about it.

Q. We all try to do that. Right? There's nothing wrong with that?

A. That's right.

Q. You hope what's good for Mississippi was good for Wiley Fairchild and whatever you could to help that along, you would. Correct?

A. Yes.

Q. And you knew a lot of, aside from Carroll Ingram, who was a member of the legislature, you knew of a number of of people who held public office. Right?

A. Yes.

Q. You knew governors of Mississippi?

A. Yes.

Q. Which governors? Who was the first governor you knew on a personal business?

A. Oh, J. P. Coleman.

Q. Later became a judge?

A. Yes.

Q. Judge of the Fifth Circuit. Correct?

A. Yes.

Q. Which is the next highest court in the federal system. Right?

A. Yes.

Q. Who else? What other governors?

A. Well, Governor Dodson, William Winter and Governor William Waller.

Q. Okay. And you were on speaking basis with these people?

A. Yes.

Q. Okay. And on occasion, in fact, you even had some business transactions with Governor Waller?

A. Yes.

Q. He was in some -- he made some investments with you. Correct?

A. Yes.

Q. He invested in some oil and gas wells and he was successful on some and some were unsuccessful. Right?

A. Right.

Q. You tried to make the investment hopefully good, but you didn't always second. Correct?

A. Repeat the question?

Q. Surely. That's just what I want you to do, any time you don't understand it, tell me. Over the years, prior to this, prior to the 70's William Waller had made some investments in the same oil wells that you were in. Correct?

A. Well, I put him in some, yeah.

Q. And he paid money for those investments?

A. Yes.

Q. And sometimes he made money and sometimes he didn't make money. Correct?

A. Yes.

Q. Okay. Were there other people who you -- You used the phrase, put him in the investment. These were usually leases, oil leases that you owned or leased and you would sell him a piece, a small portion. Is that right?

A. Yeah, but what we call royalty, override.

Q. You really are someone who's been in this business a long time. Right?

A. Yes, sir.

Q. Tell the jury, when you say a royalty interest and overriding interest, what does that mean? Explain it to them.

A. You got the royalty is one eighth, the land owner, when you lease, you got to give him an eighth and you can give him a sixteenth override or an eighth override and then if, in Governor Waller's case, out of my leases, I carved him out an override.

Q. An override?

A. Yeah.

Q. So they understand, what's the difference between the royalty interest and an overriding royalty interest. Is there any difference?

A. Just in name only. An eighth is an eighth.

Q. Just so we understand, there are obviously eighth eighths to the whole mineral interest. Right?

A. Right.

Q. Seven eighths are owned by what we call the working interest. Correct?

A. Yes.

Q. The one eighth belongs to the royalty holder. Right?

A. Right.

Q. Normally if Joe blow, if somebody, if I owned the piece of land, correct, and I let you drill on it, I would hold the one eighth royalty interest. Am I correct?

A. Yeah.

Q. You would have the seven eighths. Right?

A. Sometimes you give an override, but you got to give an eighth royalty.

Q. I understand.

A. Right.

Q. Sometimes you lease, you can buy not only the working interest, but the royalty interest as well, from the the land holder. Right?

A. Yes.

Q. And many times that's what you do, you own all eighth eighths. Right?

A. In some cases, yes.

Q. In any event there have been occasions, William Waller was one, I take it there were other men -- Were there some other men who held public office or people who you didn't do business with on a day in day out basis whom you let investment, put into investments?

A. There are probably some maybe I didn't put them in, but I'd steer them, you know.

Q. You'd steer them to what would be a good investment. Right?

A. Yes.

Q. And they would put up their money and either make money or lose, depending upon whether you put them in a good investment. Right?

A. Right.

Q. Okay. And they could put up money or they could go to the bank and borrow and put up money. Right?

A. Yes.

Q. Okay. You have borrowed money throughout, in your life?

A. About 12 years ago.

Q. You haven't had to since?

A. No.

Q. You're a lucky man. Let's come back to the 70's. You told us that at some point Carroll Ingram, he would see you, when he wasn't up in the legislature -- Let me ask this first: There was a portion of each year when the legislature was in session.

Right?

A. That's right.

Q. And do you know what part of the year that normally is?

A. Usually the first three or four months of the year is all they're in session.

Q. So the legislature is in session right now this year?

A. Yes.

Q. Okay. And it's in session for three to four months and then it goes out of session. Right?

A. Yes.

Q. And when it was in session, would you see Carroll if he was up in Jackson for that period?

A. Yeah, when he was, when he was snort, I'd see him very often.

Q. Even though he was up in Jackson, in session?

A. Yeah.

Q. Would you go up there to see him?

A. Well, yeah, I did occasionally or send somebody.

Q. Okay.

A. Or he'd come back here home on Saturday night and I'd talk to him.

Q. Do you need some water? Would you like some water?

A. No.

Q. No?

A. No.

Q. Okay. When he wasn't in session, would you see him fairly regularly in Hattiesburg?

A. Yes.

Q. He would come to your office or you would call him on the phone?

A. Or we'd meet, we would run into one another at the country club.

Q. And some time, there came some point when he mentioned Judge Nixon's name to you. Right?

A. Yes.

Q. By the way, did you know other judges besides Judge Nixon? Had you heard of other judges?

A. Well, the state judges.

Q. Which ones?

A. Oh, Stanton Hall and Jack Weldy and Dicky McKenzie.

Q. Okay. Did you know any other federal judges?

A. Well, I knew Judge Coleman.

Q. He's the court of appeals judge?

A. Yes.

Q. After he was governor?

A. Yes.

Q. And when he mentioned Carroll -- Do you remember where you were when Carroll Ingram mentioned Judge Nixon to you?

A. In my office.

Q. Okay. He came and saw you in the office. Right?

A. Yes.

Q. Probably there on some other business and you have a conversation about this. Correct?

A. I don't remember him mentioning it, but there could have been some other business. I don't remember.

Q. He mentioned to you, as I understand and you correct me, that he knew Judge Nixon? Right? He told you he knew Judge Nixon?

A. I know he knew him.

Q. How did you know that?

A. Just general conversation.

Q. Okay.

A. Just general conversation.

Q. He was a friend of his. Right?

A. Yes.

Q. Lawyers have friends who are judges just like you have friends who are junction. Right?

A. Yes.

Q. And when he mentioned it to you, is it fair to say that you did not know Judge Nixon personally at that time. Right?

A. No.

Q. But everything you had heard about him was from your view, you had only heard good things about Judge Nixon. Is that a fair statement?

A. Well, not -- I hadn't heard nothing that I knew to be bad.

Q. Okay. And when he suggested, he says to you, as I understand it, that Judge Nixon had mentioned that he would like to make an investment and would he, Carroll, speak to you about it. Right?

A. Repeat the question.

Q. What did Carroll say to you when he first mentioned that Judge Nixon would like to make an investment?

A. He says I would like for you to put Nixon in a good oil deal. He's got a bunch of kids and he's having a time with his his finances or something. He needed to, he would like to get in a good deal.

Q. Okay. Now you knew that judges, I mean he didn't have to tell you this. He knew that judges get a salary. Right?

A. Yes.

Q. I take it, did you know that the salary of a federal employee, you have to live within that budget, right, if you're a federal employee, a federal judge?

A. I didn't know they had to live within that salary, no.

Q. What I'm saying is that's the money that's available for them, that's the pay check they get?

A. Yeah.

Q. And when he told you this, did he mention to you words to the effect that the Judge wanted, because he had these children, who needed to be educated and that cost a lot of money that he wanted to make some investments to supplement his income? Do you recall Carroll talking to you about that?

A. Yes.

Q. That sounded to you like a reasonable thing for Judge Nixon to want to do?

A. Well, I didn't question it. I just -- I didn't question it. I just assumed that he was telling me the truth.

Q. Okay. You had no reason to doubt it. Right?

A. No.

Q. You didn't have any reason to think that Judge Nixon would not have been telling the truth to Carroll Ingram. Right?

A. Repeat --

Q. I'll withdraw that question because that's a little complicated. When he told you that, when Carroll told you that on this first occasion, I take it you simply said, I'll be happy to do that?

A. Or words to that effect.

Q. Okay. If I use some words that are little different than what you recall, please correct me and try to tell me what your words were. If what I say is accurate, we'll go on from there. All right?

A. (Nods yes.)

Q. You indicated you would be happy to do something like that. Am I correct?

A. Yes.

Q. And you don't have any idea, as you sit here, the date of that conversation. Am I right?

A. No, I don't remember that.

Q. Would it be fair to say Carroll Ingram is a man some 30 years younger than you. Correct?

A. Yes.

Q. How old are you right now, sir?

A. 73.

Q. Okay. And Carroll is an attorney? Carroll is an attorney?

A. Yes.

Q. And I take it he would, he and you were the only ones who had that conversation. Right?

A. Yeah, the initial conversation.

Q. That's what I'm talking about.

A. Okay.

Q. So if you don't remember when it was, we could go ask Carroll to tell us what his best recollection of when that happened. Right?

A. Yes.

Q. Okay. And I take it that you said you would look into it and then it was a case of do you do anything immediately or you just kept it in the back of your mind as something you were going to take care of?

A. Oh, I -- I just was thinking about it and sometime later on picked out these three wells.

Q. Okay. Do you remember that some period of time passed in which Carroll mentioned it, you know, before you picked out the wells, he reminded you that you had agreed to do that and you hadn't got back to him yet. Do you remember that?

A. Well, I've got a faint remembrance of him jogging me up, yes.

Q. When you say a faint remembrance of his jogging you up, it was something that he had asked you to do, you hadn't gotten around to it yet, just because you had a lot of other things on your mind. Right?

A. (No response.)

Q. Am I correct?

A. Well, there was some reason that we hadn't gotten around to it.

Q. You hadn't picked the wells out yet. Right?

A. Well, some time after Carroll come out there, it wasn't all that, it wasn't, it wasn't a months and months after that.

Q. It was some period of time, but it wasn't the next day, some time passed, Carroll had occasion to jog you on it a bit and some time after that, you got around to sitting down and deciding which wells. Right?

A. Yeah, I decided what wells.

Q. Now if there's one thing that you do, forgetting how good your memory is on dates, you know the oil business pretty well. Right?

A. Well, sometimes I think I don't, but I've been successful, yes.

Q. And I think I heard you say there's been a lot of times when a well that even was on stream, that you thought was going to run, really be successful, was a bum, was just not a good producing well. Correct?

A. Yes.

Q. Is it fair to say that if you're going to describe the oil business in one word, you'd call it a gamble?

A. Right.

Q. It is a risky business. Right?

A. Yes.

Q. What that means is that your investment, there's a good chance you will not recover your investment but if you're lucky enough to hit a good well, you will do pretty well in terms of the amount of money that's returned on your investment. Correct?

A. Yes.

Q. Okay. Oil wells are extremely expensive to put into operation, oil and gas wells. Right?

A. Yes.

Q. Okay. You had at that time, in 1980, let's say, 79, 80, in that period, thousands of acreage in which you had royalty and working interests, right?

A. Royalty and minerals, no working interests.

Q. And mineral interests.

A. Right.

Q. And they spread -- Some in Florida?

A. Yes.

Q. Alabama?

A. Yes.

Q. Louisiana?

A. Yes.

Q. Mississippi?

A. Yeah.

Q. What other states? Arkansas?

A. No, I don't -- We probably got some scattered or we bought a spread of minerals, might have some up there. I don't know whether we have or not.

Q. Okay. Are those the main states, Louisiana, Mississippi, Alabama and Florida?

A. Yes.

Q. Anything elsewhere you have a lot of interest?

A. No.

Q. Of of those states, are some states better oil producing states than others?

A. Yes.

Q. Of those states would Louisiana be the best?

A. Yes.

Q. Far and away. Right?

A. Yes.

Q. Second best is what?

A. Well, Mississippi and Florida would be about even, I would say.

Q. So the last on the list would be Alabama?

A. Yes.

Q. Alabama, though, had a pretty good field over there in Mobile County, Hatties Pond. Right?

A. Yes.

Q. That's where the Wilkie well was?

A. Yes.

Q. Right in the Hatties Pond. Right?

A. Yes.

Q. You had to make a decision as to which wells you thought would be the right ones to put the Judge or let the Judge invest in. Correct?

A. Yes.

Q. Now I take it, do you recall when you were talking to Carroll, that one of the things he mentioned to you is that the Judge had about, he was looking to invest about $10,000. Do you remember that figure?

A. He could have mentioned that but I don't recall him mentioning that figure.

Q. You're saying he could have mentioned it, but you don't have a specific recollection of it. Right?

A. No.

Q. You know that ultimately the investment was $9,500. Right?

A. Yes.

Q. Okay. But you don't have, Carroll, I guess the person we would have to go to for that is Carroll Ingram?

A. Yes.

Q. If he said he told it to you, that would be, you would rely on that?

A. If he said he told me that the Judge had ten thousand he wanted to invest, I would assume he was telling the truth.

Q. Okay. In any event you now had to pick out some wells from all of the property you had, some I take it, had been producing for a substantial period of time, some of your properties?

A. Yes.

Q. Some had been producing and were petering out?

A. Yes.

Q. They were on the down trend?

A. Yes.

Q. Some there was nobody on that land drilling a well in particular units. Correct?

A. Yes.

Q. Some were in the process of being tested?

A. Yes.

Q. Some were in the process of putting casing in. Right?

A. Yeah, we got that going on today and all the time.

Q. But my point is on all of this inventory, all of this acreage you have, they're all in different stages of development at any point in time. Right?

A. Yes.

Q. Okay. What is it that went through your mind when you're picking out which wells you thought might be good potential or good prospect for him to invest in? How did you choose them?

A. Well, it's a judgment.

Q. I understand that. That's what you were called upon to do, it was your judgment because you're so good at it, that you were making that call. When I say that call, that judgment. So what is it, just tell the jury what is it you thought about that I'll pick this one and not the other one?

A. Well, you drill a well and you'd run electrical log and it will tell you whether you got 60 to pay or 56 foot and then you get the core analysis and you take all that and analyze it.

Q. Let me stop you just a second. You didn't do the drilling on these wells. Right?

A. No.

Q. To get the core analysis, to get the logs, the drilling logs, the electrical, what do you call them, the electrical drilling logs?

A. Yes.

Q. You have to have signed a working interest. Right?

A. Yeah. Well, all these wells we had a working interest.

Q. I've looked at some of the files on the wells, so you understand that?

A. Yeah.

Q. It's my understanding you didn't sign the working interest agreement on the Wilkie well until February of 1981. Now do you want to see that document or do you want to just take my word for it?

A. I'll take your word for it.

Q. Okay. If you don't have -- If you don't have a working interest 'til then, you wouldn't have had core results, you wouldn't have seen the logs. Right?

A. Well, I was telling him I'd pay my way. There's other ways of getting ahold of the logs and the core analysis.

Q. I don't doubt that. You have been in the business, there may be somebody else may have a working interest in that same field and they could loan you the information. No question that happens. You have loaned it to other people?

A. Yes.

Q. If it's public information, you could go to the oil and gas board in the county or the state. Right?

A. Yes.

Q. Okay. There are ways to do it. But as I understand it, take the Ross well in Covington County, if you had simply chosen that one well, you did choose that well as one of the three, didn't you?

A. Yes.

Q. In fact he had the largest investment in that well, right, five acres?

A. Yes.

Q. So the jury understand, the kind of interest we are talking about, he simply had, when you calculated five ten thousandths of your interest, correct, point 00057 and then it goes out to 29 different digits. Right?

A. It was a very, very small amount of my interest.

Q. Okay.

A. I don't remember the decimal figures.

Q. We could figure that out by looking at the division orders. Right?

A. Sure.

Q. No problem at all. In any event, if you had simply chosen the Ross well in Covington County right near here, he would have lost money, if you hadn't put him in the other two as well. Correct?

A. Well, I hadn't figured it up but it wouldn't have made no money, no.

Q. It wouldn't have made no money, all right. If he wouldn't have made no money, the best he could do is break even?

A. Like I say, I haven't put the figures to it but it would have been a bad investment.

Q. By the way, when you were choosing it, you didn't choose it because it was a bad investment, you thought it was a good investment?

A. Yes.

Q. In fact that's the one you gave the greatest acreage in, five in that, three in each of the others. Right?

A. Yes.

Q. Your judgment was wrong on that one well. Right?

A. Yes.

Q. You have been wrong before, you will be wrong in the future, but you usually do more guessing or judging right than wrong. Correct?

A. Yes.

Q. But that was one well you put in, that you chose. Right?

A. Yes.

Q. And it just looked like one that in your judgment, your gut feeling, was that well could produce, that could be a good well. Right?

A. Yes.

Q. Let's understand something. Every well that you are going to allow the Judge to invest in, you are going, you are in effect predicting your own success in the same well, because he only has a fraction of what your interest is. Right?

A. Yes.

Q. Okay. And you picked that well in Simpson as one -- That's the county, you were born in that county, right?

A. Yes.

Q. Up in Seminary. Right?

A. Yes.

Q. All right. You knew that county and the oil potential in that county pretty well?

A. Yes.

Q. You also picked out one in Marion County, that's the Rogers well, right?

A. Yes.

Q. Just so we understand, every well has a name to it, right? Could give it a number, but basically they have names and some way goes back to who originally owns the land or something like that, right?

A. Who originally owned the land, that's right.

Q. You picked out the well in Marion County also, right?

A. Yes.

Q. And you were as hopeful that the Marion well would do well as you were with the Ross well in Covington, right?

A. Yes.

Q. Then you picked out a third one, not in Mississippi, but in Mobile over at Hatters Pond, right?

A. Yes.

Q. I pronounced it correctly, Hatters Pond?

A. Yes.

Q. You were optimistic, you felt good about that, about that possibility?

A. Yes.

Q. And there you did the same thing, you gave him a three acre interest, right?

A. Yes.

Q. When we say three acres, it's three acres which is a fraction of the total unit, which is like 640 acres, right?

Q. Yes. A unit, traditionally, 640 acres, right, square acres?

A. Yes.

Q. And so it's really, if you give someone three, it's three into the 640, multiplied by the one eighth, right, to come up with his share, correct?

A. His would be -- a unit consists of 640 acres which has 5120 equivalent royalty acres. And he got three of that.

Q. Three of 5100 royalty acres, right?

A. Yeah.

Q. We end up with the same calculation coming at it from a different way?

A. Yes.

Q. In any event, you sat down -- I take it by yourself, you didn't have to talk to anybody else to decide which of these, Carroll is not going to be of any help, he doesn't know anything about oil wells, right?

A. I don't think he knows much about them.

Q. Law books he may know something about, oil wells forget it?

A. He's dabbled in it a little bit.

Q. But that's it. You would have made the call, the judgment by yourself as to which wells would be the right ones to have Judge Nixon invest in, right?

A. Yes.

Q. Okay. And do I understand correctly the reason you put him in not just one well, but in three, to spread the risk?

A. Yes.

Q. It's a logical thing to do, isn't it? In case one or two of them didn't, weren't successful, weren't producers, hopefully the third would be?

A. That's the reason I put him in three wells.

Q. And you made that judgment, and then I take it you told Carroll, right?

A. Yeah.

Q. Okay. And you told him, what, the well, such and such a name in Marion, Ross in Marion, Rogers in Covington, and Wilkie in Mobile County, right?

A. Yeah.

Q. You told him the amount of acreage that you were going to give, to assign to Judge Nixon, correct?

A. Yes.

Q. All right. And once again, did this, did you call him to tell him this, Carroll I'm talking about, or did you happen to see him in your office, if you recall?

A. I don't recall.

Q. But you gave him that information in some way?

A. Yes.

Q. At that point, we know that there is going to be a period of time that's going to pass between that and the date that the actual deeds were drawn up, but when you first told Mr. Carroll, did you expect that he would draw up the deeds or did you think it would be done in your office?

A. Well, I was depending on Carroll and it was my hope that he would draw up the deeds.

Q. Okay. So you're sitting there thinking that now that you've given the information, you've given them all of the key information, you've told him which wells, right?

A. Yeah.

Q. You've told him I take it he can check with your office -- let me just stop a minute. Carroll dealt with your office staff pretty frequently in terms of legal business he had there, right?

A. Yes.

Q. He knew he could get the description of the property from your staff, correct?

A. Yeah.

Q. You had given him the acreage, told him the location, and he knew, everybody knew who the grantee was going to be, who was going to be getting the assignment was Judge Nixon, right?

A. Yes.

Q. So it was just a case of waiting, you were sitting back waiting for the deeds to be prepared by Carroll, right?

A. That's my recollection, yes.

Q. Okay. Apparently Carroll was doing nothing to prepare them, he thought you were going to prepare the deeds in your office, or have your office prepare it, correct?

A. That could have been the way.

Q. Okay. If there is any doubt about it you tell us, okay? But it's my understanding, you've told us that you were waiting for him to do it, and we know he didn't do it, right, because ultimately your office prepared the deeds, correct?

A. Ultimately, yeah.

Q. Long period of time went by between the time you told him the particular wells and the actual preparation of the deeds, right?

A. I don't remember how long a time went by.

Q. You have absolutely no recollection as to how much time went by, right?

A. Well --

Q. That's all right.

A. It wasn't years. It was some time.

Q. No problem. It wasn't something that was of great concern to you and thinking back, some period of time went by but you don't have any idea of how long, right?

A. I wasn't concerned about it.

Q. Fine. And I take it that there was then some discussion at which -- let me stop there. There is nothing else you have to do. The division orders would come later, anything else would all occur after the assignment, right? All that had to be done at that point was the preparation of the deeds and the payments to you or the signing of notes by Judge Nixon, correct? That's the only thing waiting to be done, right?

A. Assigning of the deeds and getting them on record and getting them to the people that was operator of the wells.

Q. Okay. The wells were Getty, am I right, Getty was -- Getty Oil could was on the Wilkie well?

A. Right.

Q. Union was on which well, Covington?

A. Covington.

Q. And Exxon was drilling the Marion County well, the Ross well?

A. I don't remember, I don't think it was Exxon. Could have been.

Q. It was some third company?

A. Yeah.

Q. And they would be doing the drilling, they would be letting you know what the progress was, et cetera, right?

A. Yes.

Q. Since you had the working interest, they were all -- you know what an AFE is?

A. Yes.

Q. Tell the jury what it is?

A. They send an AFE, that's what it's called, but they got a breakdown how much it's going to cost to drill and complete this well.

Q. Okay. They were telling you as the working interest owner how much they're going to pay, tell you what the expense is calculated to be to drill this well, to take it to a certain point, and what is expected if you want to participate, how much it's going to cost you as well, correct?

A. That's right. It's just, it's an estimate.

Q. Okay. And those estimates on drilling wells go into the many millions of dollars to drill wells, right?

A. Yes.

Q. In fact, one of these -- which one cost 7 million dollars to drill?

A. Wilkie.

Q. Seven million just to drill it?

A. It was real expensive, I don't remember. Taken them a lo time to drill it.

Q. In any event, you indicated, you answered some questions before as to what you thought the value of this property, of this property was. You're not going anyplace, are you?

A. No.

Q. You told us what you thought the value of the property was in February of 81, and you were asked what the value of that property would have been when you originally told Carroll about it when you picked it out. You said it was far less, correct?

A. Yes.

Q. I take it you said it was about, you came up with a pure judgment figure, 26 to 28 thousand in 81. I take it from what you've said on other occasions, ninety-five hundred, as a price back around 1980, would have been what was then the market price at that time in your judgment?

A. Now I'm confused.

Q. If you're confused, then I have to straighten it out then, okay. The value of the well in 1980 -- let's talk about it hypothetical. If you have a well today that's been drilled, it's going, it's worth more today than it was when you first began testing a year ago, okay?

A. Yes.

Q. The value a year ago might be one third of what it is today, correct?

A. Yes.

Q. If you go back when it was just raw land, soybean field, even though you owned it, it may have been worth only a fraction of what it was when you began testing, correct?

A. Yes.

Q. You bought generally speaking these wells or the interests in these wells for about two to three hundred dollars an acre, right?

A. Yes.

Q. Back in the mid-70's, right?

A. Yes.

Q. Sort of, all you did was buy just land. There was no, nothing pumping there, nobody is testing, nobody is interested at that time? You speculated when you first bought it that someone is going to come along and want to drill for oil, right?

A. Yes.

Q. When you sold them that interest, or fraction of the interest to Judge Nixon, you sold it to him for about seven hundred times profit you made on the wells, is that right?

A. Yes.

Q. In fact, you prepared a document at one time showing that, correct?

A. Yes.

Q. Okay. So you made not millions of dollars by any means, but if you had paid, by my calculation, something in the neighborhood of three thousand for that interest, you sold it to him for nine thousand five hundred, correct?

A. (No response.)

Q. We're talking about eleven acres, using a number like 250 dollars?

A. If you want to compare it to what I'd paid.

Q. You've seen it, you prepared a document, because you knew this was this case, right?

A. Yes.

Q. Okay. You sold it to him at a profit, you paid. I assume you would have paid tax on whatever that profit was, right?

A. Yes.

Q. Okay. And at the time when you set the price and picked the acreage it was far, the value of the was less than the value in February of 1981, correct? You understand my question?

A. It was worth, as the time goes on it's worth so much now, it's worth more later on.

Q. Right. So in 1980 it was worth something less than it was worth in 1981?

A. Yes.

Q. So if you told Carroll in the very end of 79, even the beginning of 1980, which wells and how much acreage it was and you didn't get around to preparing the deeds until February of 81 when you told Carroll what, which acreage it was, and set a price, that price of course would be less than the price you would put on it, or the value you would put on it a year later, correct?

A. In this particular, this particular wells, I don't remember the exact time that I -- I don't remember putting a price on the wells myself. I could have, but I just don't remember that.

Q. In this transaction, there is only two people involved, Judge Nixon, you told us, I heard you say it, you had no discussion with Judge Nixon as to the price, right?

A. No.

Q. The only person you talked to is Carroll Ingram, right?

A. And Skip Jarvis.

Q. Well, Skip Jarvis doesn't advise you on price; you may have told him what the price was going to be, but you set the price, correct?

A. I don't remember, and I could have, but I don't have -- I don't remember.

Q. That's fine.

A. And --

Q. Go ahead?

A. I was depending on Carroll Ingram, he's my attorney.

Q. No problem. I understand. You set a price, and I take it you indicated that you thought that the wells were on line in 1981, right? Am I using the right phrase? If they were producing they are called on line?

A. Yeah.

Q. On stream or on line?

A. Both terminologies is correct.

Q. Okay. You indicated you thought that in February of 81 when those deeds were prepared that the wells were producing, correct?

A. Yeah.

Q. Okay. Tell the jury, though, before we come to that, what is it that makes drilling of oil and gas, what is the problem? Why is it so speculative, aside, one problem is you come up with a dry hole, right?

A. Yes.

Q. Even there are times you drill, look at your logs and your core analysis, and it looks like it could be okay, right?

A. Yes.

Q. Sometimes it looks terrific, right?

A. Yes.

Q. And what looks terrific turns out to be a dud, right?

A. Yeah, I've been in wells like that.

Q. Tell the jury why. What is it about the mechanics of drilling a well, even when it looks likes it's going to be good that you can't tell that it's a good well until it has produced for how long a period before you can really judge?

A. Well, I hasn't thought of it exactly that way. But I know, I've had working interest in a well, we'll drill it, cost couple million dollars, and -- to drill and complete, cost hundred, or million dollars to complete, put it on stream, and maybe not get fifty thousand dollars out of it.

Q. In other words, you do all this work, million bucks, a million bucks from the point of testing to completion or the whole cost of putting it on stream is a million, the example you just gave?

A. Well, that's very rare. It happens, but it's very rare.

Q. I understand. But what I'm asking you, there are times that the well starts to produce?

A. Yes.

Q. And then something goes wrong?

A. Yes.

Q. That happens a lot of times, right?

A. Yes.

Q. Problems with the cement, the casing not holding right, correct?

A. Well that is some of the problem, but --

Q. Okay. Tell the jury about saltwater? What's the problem with saltwater even in a producing well?

A. Well, you don't know how big the reservoir in there, you have to water drive, and you got to water drive, it's saltwater down here, the oil here, start producing, you get the oil out, here comes the saltwater.

Q. Tell the jury how much you can sell saltwater for.

A. Well, it costs about three hundred dollars a truck load to dispose of it.

Q. You mean you just give it away, no market for saltwater?

A. No.

Q. Okay. In any event, that is a, not every well ends up with that problem, but it is a potential problem for anyone who has a well and is drilling it, correct? Where it's on stream in the early stages, correct?

A. Yes.

Q. There are, we could go through them, there are any number of problems, mechanical in nature, which could make the well unsuccessful, correct?

A. Yes.

Q. Not only that, we have another major problem which everybody knows about, price of oil, right?

A. Yes.

Q. In the last three years, you correct me if I'm wrong, it's gone, some place it's fluctuated from 40 dollars a barrel down to 6 dollars? You tell me, you know it better than I do.

A. Mine hadn't. It's went from 42 dollars and something a barrel down to, on spot market yesterday it was 18 dollars a barrel.

Q. Okay. Pretty serious, I overstated, six I guess would be gas, not oil, right?

A. 6 dollars a thousand for gas, but now, used not to be a good price, but that's a really good price now.

Q. Six is good now?

A. No. Six would be good.

Q. You can't get it now?

A. No.

Q. That has a direct bearing on how good or how successful even a producing oil or gas well will be, correct?

A. Yes.

Q. These wells basically produce both oil and gas, right?

A. Your oil well produces more oil than gas, gas well produces more gas than oil.

Q. Okay. If I understand correctly, let's just -- Skip Jarvis came to you as we understand it, I take it you're not being good on dates, you wouldn't remember precisely when he came?

A. No.

Q. He was here yesterday, right?

A. Right.

Q. You didn't have much to do with him when he came back to town, did you?

A. No.

Q. If you never see him again it wouldn't be too soon, would it?

A. No.

Q. Okay. He says he worked for you, at least the one thing he said we think is accurate, he went to work in August of 79. That sound about right?

A. Yes.

Q. He worked, you put him to work on your staff, seemed nice enough, he was going to do things you needed to be done in the office basically, right?

A. Yes.

Q. That's what his function was, he wasn't, he wasn't Wiley Fairchild, he didn't have the experience in the oil and gas industry, he didn't make the judgment calls that you made, correct?

A. That's right.

Q. Okay. One other thing. I want to come then to 19 -- around February 81, the deeds haven't been prepared yet. And nothing has happened in terms, you've already made a deal to give certain amount of acreage -- three in Marion, five in Covington, three in Mobile, to assign those to Judge Nixon but to assign them, to sell it to him you have to prepare a document, right?

A. Yes.

Q. Handshake isn't enough, you have to have a document, right?

A. Yes.

Q. Before we go on, I just wanted to ask you something. Are you sure that those wells were producing at the time, even in 81?

A. I couldn't swear that they was, but I think they was.

Q. One way we could tell, couldn't we, is if we took a look at the records of the oil and gas board, because every well must file of record the gas production and oil production with the county or the state, correct?

A. That's right.

Q. All right. Let me show you something if I might. Could I have an Exhibit 10? You've seen these before, haven't you, oil production records?

A. The completion report?

Q. Not the completion report. The completion report is simply a report, is it not, that is filed, required by law, to show the date of completion, the depth of drilling, the thickness of the casing --

A. Yeah, yeah.

Q. But there is a report that is filed by the producing company, Exxon, on the Wilkie 28, okay, Hatters Pond, and it shows you the gas production, right, and oil?

A. Yeah.

Q. Here's the year 1980, and here's where they tested it in June and July, you see that?

A. Yes.

Q. Nothing before that, did some testing, June and July, right, of 80?

A. Yes.

Q. Not a drop in August, September, October, November, December, am I correct?

A. Yes.

Q. Now let's go to 81. January, tell me, how much oil and gas?

A. None.

Q. February?

A. None.

Q. March?

A. None.

Q. April?

A. None.

Q. May?

A. None.

Q. June?

A. None.

Q. July?

A. None.

Q. August?

A. None.

Q. September?

A. None.

Q. October we finally go on stream, am I right?

A. Yeah.

Q. Okay. Now, you had not memorized the facts that you testified to, but I take it, having seen this exhibit, you now see that the well, the Wilkie well in Mobile was not on stream until October of 1981, right? Is that correct?

A. Them reports, if that come from their oil and gas board of Alabama, they are, I'd accept them as being correct.

Q. Fine. I take it then that it was just that you were in error in the sense that you thought it might have been on stream, but it wasn't, because the report makes clear it wasn't on stream for one, two, three, four, five, six, seven, eight months after February 21, correct?

A. Yeah.

Q. Enough can happen after it goes on stream, it's a lot more speculative investment before it's put on stream, correct? Do you understand my question?

A. Repeat it.

Q. A well that has not gone on stream yet is a much, is even riskier than one that is on stream in its early stages, correct?

A. That's correct.

Q. Here we have a well in February of 81, it doesn't go on stream for another eight months, correct?

A. Correct.

Q. All right. So much for Wilkie. You want to go through the rest to take a look at the oil and gas -- you didn't really know whether they were on stream in February of 81 or not, did you?

A. No.

Q. You were using your best estimate, not guessing, but trying to recollect, you seem to have been in error, correct?

A. I will say I was in error.

Q. Okay. You have similar documents, don't you, in Mississippi? There are filings, what do you call the board here in Mississippi? Do you have to file?

A. State oil and gas board.

Q. You file what's called a Mississippi oil and gas monthly production ledger, correct?

A. Yeah.

Q. You've seen plenty of those, right?

A. Yeah.

Q. All right. Let me show you, let's mark it Defendant's Exhibit 21. Let's show it to the government. Now we'll show it to you. This is for the Rogers well -- by the way, this log or this ledger is for many different fields, is it not? You've seen these documents before, correct?

A. Yeah.

Q. Let's look at the one, we're talking about Green's Creek Field, isn't that the one? There is the Rogers well, Marion County, no question we have the right well, right?

A. That's right.

Q. Okay. Now we're going to look at what have we got up through the beginning of 81? In other words, anything produced before the first month of 1981, tell the jury how much oil and gas had come out of that well up until that time?

A. None.

Q. Which means --

A. According to this report.

Q. You don't have any doubt any more about the report?

A. No.

Q. It had not been put on line yet, right?

A. No.

Q. Let's go then, this report is for the year 81. They told you what happened, cumulative figure you've just read from?

A. Yes.

Q. January it wasn't on line, right?

A. January when?

Q. 1981?

A. Yeah.

Q. February it wasn't on line?

A. No.

Q. And March it wasn't on line?

A. No.

Q. So it doesn't go on line, a little bit of production in April we see it on line, that's when it goes on line, right?

A. Yeah.

Q. That's three months after February of 1981, correct?

A. Yes.

Q. Two months. Two and a half months, correct?

A. Right.

Q. So at least as to these two wells you were in error, perfectly — you know you're human, aren't you? You can make errors in judgment, your recollection, correct?

A. I'm saying them was, that I was in error, yeah.

Q. All right. Fine. The records are in effect the best evidence of when the wells went on line, right?

A. Yes.

Q. Okay. We could show you the Ross well, but what do you call a bad well in the business? One that doesn't produce?

A. Well, the Ross is one of them, it produced, but it just wasn't what it was supposed to be.

Q. Never got your money back on that well?

A. Well, I leased mine out and take an override in it, and I, of course, didn't put up no drilling on it. I own a lot of minerals under it. The folks I leased to hadn't got their money back.

Q. And I take it, you're aware, are you not, that Judge Nixon paid two thousand dollars plus interest for that, for the interest to be assigned on the Ross well, correct? Do you remember how much he paid for each one?

A. No.

Q. Well, we have the notes?

A. Yeah.

Q. Let me refresh your recollection. The Ross well in Covington, two thousand dollars; the Rogers well in Marion, three thousand dollars; and the Wilkie well, four thousand five hundred, okay?

A. Yeah.

Q. All right. And the Ross well is the two thousand. Do you recall whether he even -- Did he make money or lose money on that?

A. Well, I haven't run up the figures. They will speak for themselves.

Q. Those were the ones with the checks for a dollar 50, five dollars?

A. Yeah.

Q. Would it be fair to say he lost money or do you want to check it out?

A. Well, just from my judgment, reading them checks, I would think he had lost money.

Q. And he made money on the other wells. Am I correct?

A. Yes.

Q. Made a nice profit on the other wells?

A. Yes.

Q. If those wells, though, had done, there were no line, even in February of 81, if they had done like the Ross well, you would have been an unhappy, you would have felt unhappy in putting him in those kind of investments. Correct?

A. Yes.

Q. You were happy to see him make some money on these investments. Right?

A. Yes.

Q. When he sent the checks in payment of these interests, you put them in your -- I assume they were deposited in the normal course as part of your business. Right?

A. Yes.

Q. Including the interest?

A. Yes.

Q. Ten percent interest. Right?

A. I don't recall the interest. Whatever the note says.

Q. Okay.

A. That's what he paid.

Q. Whatever was going at the time. Is it fair to say that you got, I'm not interested in prying into your personal assets or your personal wealth, but if it comes down to a bank making ten percent or Wiley Fairchild or one of his companies making ten percent interest, you would rather make the ten percent yourself. Correct?

A. Yeah.

Q. No problem with that. Correct?

A. (Nods yes.)

Q. Okay. In February of 1981, you must have in some way, I take it, since you were sitting there for a substantial period of time, waiting, thinking that Carroll was going to take care of this, in some way you must have realized that it had to be prepared in your office. Correct?

A. (No response.)

Q. Because that's where it was prepared?

A. Yeah, it was prepared in my office.

Q. Well, if it was prepared in your office, somebody had to give the instructions to prepare it, I think that had to be you?

A. Well, yes, I would say that.

Q. Sure. And you told Skip Jarvis to prepare it. Right?

A. Yeah.

Q. And he did. He prepared the first --

MR. FAWER: Could I have -- What's the number of your exhibit, the --

MR. WEINGARTEN: Eight, nine and ten.

MR. FAWER: Eight, nine and ten. We have them right here. Excuse me. Let me give you these back for the time being.

BY MR. FAWER:

Q. Here, let's just look at this. That's eight, nine and ten. You don't have to read them over very carefully, but what I wanted to show you, these are the deeds we understand you asked Skip to prepare. It's the kind of thing he did, you would give him a instruction and he would go get some typist or secretary to type them up. Correct?

A. Yes.

Q. You told him to, I take it you must have told him not to put the name of Walter Nixon on it. Right?

A. (No response.)

Q. To leave it blank?

A. I think Carroll Ingram told him that.

Q. You think Carroll was there?

A. Not when he was -- not when it was -- not when they was being typed up, Carroll wasn't there.

Q. Well, --

A. I just remember something about it. He didn't know whether he wanted his name or he wanted it in his wife's name or what.

Q. Let me ask you, let me suggest something to you. Let me ask you a question. Before February of 81, you knew of a man named Judge Nixon. Right?

A. Yeah.

Q. Isn't it a fact that you really didn't know what his full name was? Did you know his full name then?

A. No.

Q. So how would you even, if you wanted to fill in the blanks, how would you have filled it in?

A. I would have called -- Asked Skip here to fill this out to Judge Nixon.

Q. Left it blank?

A. (No response.)

Q. No, he left it blank, they're blank, aren't they?

A. Yeah, they're in blank.

Q. There's nothing wrong with them being in blank, is there?

A. No.

Q. You have given instructions any number of times when you were making assignments to leave the grantee of the document or assignee in blank. Correct?

A. Yeah, I've done it and I could have done it here, but I don't remember it.

Q. We are dealing with your memory which is only as good as it can be and you're trying to do the best that you can. Right?

A. Yes.

Q. And you told him to put down, he filled it out according to your instructions. Right? Skip tried to do what you told him to do?

A. Yeah.

Q. And then he brought it back to you for your signature. Correct?

A. Yes.

Q. Now apparently, as I understand it, later on there was some problem as to who, whether it was you personally or the corporation, who really held the interests but, as a practical matter, at the time, you just signed your name and it was witnessed by Jarvis and Sherry Barnett who worked in the office. Correct?

A. Yeah.

Q. All three, put them in an envelope, you told Skip to bring them over to Carroll. Right?

A. I think so. Yeah.

Q. Okay. Brought them over to Carroll and as far as you knew, that should have been the end of it. Right?

A. Yes.

Q. But instead, you got a call from Carroll. You remember that?

A. (No response.)

Q. If you need to be refreshed on it, just ask me.

A. I don't remember getting a call from Carroll. I remember Skip saying Carroll brought the deed back and said back date it.

Q. Well, let's look at the facts and see what we can learn by whatever appears on the document. Skip has told us that he sent them over, brought them over, he had overriding royalty deeds, he had them notarized, prepared just as you see them.

A. Yes.

Q. Put them in an envelope and you had already left for the day and left it with you. You must have then sent them over to Carroll some way. Okay? No problem with that?

A. I probably did.

Q. Well, what's the next thing we know? This document apparently has been, I don't know, there's been water on it or something, but it says something very clearly, let me show it to you, so you can read it too. It comes back to your office, that's your name, Wiley Fairchild on it?

A. Yes.

Q. Personal and conf -- C-O-N-F, that means confidential. Right?

A. Yeah.

Q. It's signed Carroll Ingram. Correct?

A. Yeah.

Q. Am I correct something comes back to your office marked personal and confidential, it's not going to be opened by anybody but Wiley Fairchild?

A. That's right.

Q. Okay. Therefore, you must have, wouldn't it be likely that when you get this information back you have already spoken to Carroll about the need to change the documents?

A. Yeah.

Q. Well, there's further proof of that. That's your handwriting up there in blue. Skip, identified this as your handwriting.

A. I don't think it is. It could be.

Q. Well, okay. I haven't seen your handwriting before, but Skip seems to indicate that it is. I have no reason to doubt that fact. It says Marion --

MR. WEINGARTEN: I would like an objection. I object to defense counsel pointing out other testimony to a witness on the stand. I think that's improper. I also suggest it's improper for the defense counsel to offer his opinion about that evidence.

MR. FAWER: My opinion? Your Honor, I haven't given any opinion of the evidence.

MR. WEINGARTEN: He just gave his opinion on the credibility of Skip Jarvis' testimony.

MR. FAWER: Excuse me. So we can cut through this, Mr. Weingarten introduced this document on the Mr. Jarvis' express words that this is Mr. Fairchild's document. Now I'm pointing out the precise same thing.

MR. WEINGARTEN: And I'm expressing an objection to the form of the questions.

THE COURT: If he can remember, go ahead, fine. If he can't, go on. It doesn't make any difference, anyhow.

MR. WEINGARTEN: It does make some difference, Your Honor, because of what's right next to it.

THE COURT: All right. Let him answer if he knows. If he doesn't, let him say.

MR. FAWER: Fine.

BY MR. FAWER:

Q. You have the words, Marion, Covington, Mobile, slightly will I misspelled but let me ask you a question?

A. Yes.

Q. I'm not being critical, you're a successful man, but are you a particularly good speller?

A. No.

Q. I notice next to Marion it says three, next to Covington, it said three but it was changed to a five. You see that?

A. Yeah.

Q. And next to Mobile it says three again. Right?

A. Yeah.

Q. Okay. Now let's think of what this all means. Do you recall Carroll calling you and telling you two things; he had gotten these documents from you, already notarized, and he said there's two problems; one, is you didn't put down on the documents the right amount of acreage. It shouldn't be one acre for each because he remembered what you had told him back when you first picked out the well that it was three, five and three. Do you remember that now?

A. Well, I just remembered there was a discrepancy in there.

Q. Do you recall him, that was why he had to send them back to you. You had already told him the wells, told him the amount of acreage but you had Skip put the wrong amount on the original deed. Do you remember that?

A. Well, if Carroll says that that's the way it was, I would say that's true.

Q. Well, I'm not Carroll and Carroll hasn't been brought in here yet. But what I'm trying to do is refresh your recollection as to what occurred.

A. Yeah, I would have had to have been the one to change the acreage in each well.

Q. Okay. And it was based on Carroll reminding you of what you had decided and told him back when you picked out the wells. Okay?

A. It would have been somebody would have reminded me it wasn't correct and the --

Q. The only person in the world who could remind you is the only person you had ever told it to, Carroll Ingram. Right?

A. Yes.

Q. Okay.

A. I would say that's correct.

Q. Then he told you one other thing, he said, you know, the date on the deed is February 1981. Am I right? That's what Skip had filled in?

A. Yeah.

Q. Do you recall him telling you that the arrangement, that the deal had been made almost about a year earlier? Correct?

A. I don't recall telling him almost a year earlier.

Q. Him telling you, he told you that the date should be the date when you had told him the acreage and the well that you were letting Judge Nixon invest in?

A. I don't remember him telling me that.

Q. Well, how do you get to backdating it? Didn't Carroll, wasn't he the one that told you to?

A. Yeah.

Q. Well, I take it if Carroll, who you rely on, says it should be dated back, you recall him giving you a reason for doing it?

A. I remember him saying something about the Judge had to make a disclosure, but I don't remember him --

Q. Mr. Fairchild, let me just ask you this: You recall at some time -- You have talked to Carroll on many occasions before and after this. Right?

A. Yes.

Q. You have a recollection at some time his mentioning the judges have a disclosure form that they need to fill out each year. Correct?

A. Yeah.

Q. You're saying that perhaps that is said as the reason for backdating it, because then you would expect that if it was dated back to 1980, it would be on the disclosure report for that year. Right?

A. Yeah.

Q. Okay. That's what would make sense. Okay?

A. Yeah.

Q. Do you recall, what I'm suggesting to you, first I'm suggesting to you, it wasn't on the 1980 disclosure report of Judge Nixon. Okay?

MR. WEINGARTEN: I'm going to object to that. That's introducing evidence through counsel.

MR. FAWER: Do you want me to show him the document?

MR. WEINGARTEN: How would he know?

MR. FAWER: I can use anything to refresh his recollection.

MR. WEINGARTEN: All right. Show him that.

MR. FAWER: Can we have something less than a debate between us? I suggest, Your Honor, I have a right to put a proposition to the witness, the witness can accept it or reject it, or, as you have directed to the jury, what I say is not evidence but I have a right to ask questions, suggest facts and the witness can reject it, accept it and move on from there.

THE COURT: How would he know anything about the Judge's form anyhow?

MR. FAWER: He told us, he said Carroll had mentioned it.

THE COURT: I understand what he said.

MR. FAWER: I will go on from there, I'll move on.

BY MR. FAWER:

Q. You have never seen any such disclosure report. Correct?

A. No.

Q. You had occasion to talk to Mr. Jarvis once when he was taping you in 1984. Right?

A. Yeah.

Q. And do you recall this question came up, you remember that?

A. Yeah.

Q. And you recall telling Mr. Jarvis that it was backdated simply to, for the date on which the deal had been made. Did you tell that to Jarvis?

A. Yes.

Q. Okay. And that is what you and Carroll had discussed, that the date should be the date on which you had chosen the acreage, chosen the wells and set the price. Correct?

A. Repeat that.

Q. You told Jarvis that the backdating, you told us this is so, you told Jarvis that the backdating was simply to put it to a date when you really had made the deal with Carroll for Judge Nixon. Okay?

A. Yeah, I told Carroll that.

Q. Okay. Well, you told Jarvis that?

A. I meant Jarvis.

Q. No problem. That date, that earlier date was the day that you had told Carroll the names of the well, Marion, Covington are the locations, Marion, Covington and Mobile, the amount of acreage, three, five and three and you and he had set the price, so it was for that reason that you set, that you had it, that he, Carroll, wanted it backdated to that date. Correct?

A. I don't remember Carroll saying that's the reason he wanted it back dated.

Q. Do you recall telling it to Jarvis?

A. Yeah, when he was out there at the time, yeah.

Q. And do you recall telling Jarvis that the price that you set for Judge Nixon to pay was the fair price for when the deal was made, when the verbal deal was made, that 95 hundred was a fair price? Do you remember telling him that?

A. Yes.

Q. And that you said to him, like it's happened so many times, a deal is made way before the papers is drawn up. Do you remember telling him that?

A. Yeah.

Q. That's just what happened here. Right?

A. Apparently that's right.

Q. Okay. And then the only question was for you to tell Jarvis, after you had your conversation with Carroll, as to what date to put on the document. Correct?

A. I don't recall telling Jarvis what date to put on the documents.

Q. Well, we know Carroll is not there, we know you're in the office. Correct? Am I right?

A. Yeah.

Q. We know that Jarvis prepared the documents. Okay?

A. Yeah.

Q. So there's only two possibilities, either Jarvis has to get his instructions from you or he has to talk to Carroll after Carroll has spoken to you. Correct?

A. He would have had to got it from me or Carroll, yeah.

Q. So between the two of you, he got the date and put down on the new deeds February 25, 1980, to reflect the date the deal was made. Correct?

A. Like I say, I don't remember Carroll's telling me that's why he wanted them back dated.

Q. Listen to my question.

A. Okay.

Q. The date that Carroll -- Excuse me, the date that Jarvis puts down, February 25, 1980, is the date that he gets from either you or Carroll as the date when the actual deal was made, when the verbal deal was made.

A. Well, he got that date from either me or Carroll, one.

Q. Okay. And he prepares what is then these three documents, and he brings them to you. Correct?

A. Yeah.

Q. And you saw those, I mean you've seen the forms before. Correct?

A. Yeah.

Q. And you looked them over and you signed them, you put your name on all three. Right?

A. Yeah.

Q. There is only two differences, actually three differences at this point?

MR. FAWER: Would you indulge me one minute, Your Honor, please?

(Pause.)

BY MR. FAWER:

Q. You signed the document, you dated it? You see that there are just two changes, the number is -- Now you have five acres on the Covington deed, three on each of the others, and the date is now February 25, 1980, and you signed the documents. Correct?

A. Yeah.

Q. And you signed them, they're notarized, and that's the last you see of them. Is that correct?

A. Yes.

Q. You don't think anymore about it. Right?

A. No.

Q. And what you expect at that time is the documents are going to be recorded in the county courthouses in each of those counties. Right?

A. Yeah.

Q. And as far as you know, they were recorded. Am I right?

A. Yes.

Q. And when they are recorded, they have the name of the person who is the assignee, Walter L. Nixon, Jr. Correct?

A. Yes.

Q. That's the name of Judge Nixon, the full name of Judge Nixon. Right?

A. Yes.

Q. You've gone to county records -- Anybody can go to see deeds and conveyances and assignments. Right?

A. Yes.

Q. Did you ever tell anybody, don't record this deed?

A. No.

Q. Just the opposite, you wanted it to be recorded?

A. Yes.

Q. Did you ever tell anybody don't prepare division orders with Judge Nixon's name on them?

A. No.

Q. You know those were being prepared. Correct?

A. Yes.

MR. FAWER: Judge, would this be a good time --

THE COURT: We're going to recess when you get through with this witness.

MR. FAWER: Somebody is going to be awfully hungry.

THE COURT: Well, that's too bad.

MR. FAWER: Can we approach the bench, Judge?

(AT THE BENCH:)

MR. FAWER: We have a Judge who is supposed to be on trial for his life. I have only moved to February 25, 1981. We haven't touched this case. We're still on this -- I assume you are kidding.

THE COURT: Well, you want to recess?

MR. FAWER: I'll go for another hour if you want to have lunch at one. It doesn't make any difference to me. You have a 74-year-old man on the stand.

THE COURT: All right. We'll recess until 1:15.

(Recess.)

(End of Volume 5.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 30, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 6

DAVID A. SCOTT
COURT REPORTER
Post Office Box 2202
Jackson, Mississippi 39225-2202

JANET CLEMENS
COURT REPORTER
Post Office Box 517
Oxford, Mississippi 38655

THE COURT: Proceed.

MR. FAWER: Thank you.

BY MR. FAWER:

Q. Mr. Fairchild, we we've worked through the events of February 25th, and let's just proceed from there. As I understand it, the oil wells didn't start producing -- from what we can see from the checks, at least royalty checks weren't received until the early part of 1982? Remember you read off the dates on the checks?

A. Yes.

Q. Is it fair to say, by the way, when you look at those various checks, the early checks are often larger than the later ones. Is that not because often the money, there will be several months of production, and they'll be caught up in one check to pick up let's say four months of production?

A. Yes.

Q. That's not unusual, right?

A. No.

Q. In any event, it's your recollection, you hadn't met Judge Nixon at all before this transaction. Sometime after the deeds were recorded, in fact as you recall it after the wells, after some money was received in royalty payment, that you met him, is that right?

A. Yes.

Q. Are you sure that it wasn't a little earlier than that, do you have a pretty firm recollection? What is it based on?

A. Just my recollection.

Q. Okay. Is it fair to say, do you recall asking Carroll Ingram, telling Carroll you would like to meet the judge, and his saying fine, next time he's in Hattiesburg, I'll bring you together?

A. Did I ask Carroll that I'd like to meet the judge?

Q. That's what I'm asking?

A. I don't specifically remember that, but I very well could have said that, just in a conversation.

Q. In any event -- I'm sorry?

A. You know, just in conversation.

Q. And you had not met him. I take it Carroll brought him over to the office one day?

A. Right.

Q. You have a private office at the company, right?

A. Yes.

Q. The three of you sat down, had some coffee and chatted a bit?

A. What now?

Q. The three of you sat down and talked a little bit, correct?

A. Well, one time we did, but one time we didn't.

Q. I want to understand --

A. The first time, yeah.

Q. Just stay with me, we're not, we well come to the next one.

On this occasion, you sat, Carroll brings him over, and you've never met this man in your life, he introduces you to this gentleman here, right?

A. Yes.

Q. You shake hands, send out for some coffee or something, is that right?

A. Yes.

Q. And you chat a little bit, correct?

A. Yes.

Q. He tells you, does he tell you about his family and the reason that he appreciates you putting him into an investment?

A. He could have said it, but --

Q. Do you recall telling him anything about your life when you were younger?

A. No, I don't, but I very well could have.

Q. You have a rather vague recollection, you know the meeting occurred, it was really small talk that was taking place, is that right?

A. Yeah.

Q. Do you remember any discussion where there was some talk about, that the oil and gas business is a gamble, it's a very risky business?

A. Yes.

Q. You do remember that?

A. Yeah.

Q. Okay. And at some point, was Carroll present all the time or was he doing some business, going out of the room, taking care of other things he had to do with your staff?

A. I don't remember.

Q. Okay. I take it, how long was this first time you met one another, ten minutes, fifteen minutes, how long? Half an hour?

A. It was closer to, best I can remember, twenty or thirty minutes.

Q. Okay. At some point he either had to leave because he had another appointment or you had something to do, but the meeting comes to an end, right?

A. Yeah.

Q. Before it does, he thanks you for putting him in the investment, right?

A. Yes.

Q. And he tells you what? Tell the jury again what he said to you right there, shook your hand?

A. He says I appreciate this.

Q. Go ahead?

A. I need this, and if I can ever help you, I'll help you, if I can't I'll just tell you I can't.

Q. Fine. You understand exactly what he was telling you, right?

A. Yes.

Q. The two of you left on -- let me ask you something. Do you recall in that same conversation telling him that you'd like him to keep in touch, to drop in on you if he was in town or give you a call once in a while?

A. That would have been -- that would be like me to have said that to him.

Q. Okay. Over the next months or next year, 1982, do you recall an occasion he called you just to see how you were, talk to you about the wells, what's going on?

A. Yes.

Q. On the phone, am I right?

A. Yes.

Q. He called you, chat for five minutes, and that would be it, correct?

A. Yes.

Q. Remember him ever stopping by alone, come to your office because he was in town or passing through, have a cup of coffee with you?

A. Yes, he done that.

Q. Okay. You liked the idea he would stop by, correct?

A. Well, yeah, I was glad to see him.

Q. Glad to see him. He found you friendly, you found him friendly, correct?

A. Yes.

Q. Okay. And as I recall, correct me if I'm wrong, in late October did you learn that in that fall, 1982, October of 1982, okay? There is a place here in town called Bonnie and Clyde's, right?

A. Yes.

Q. And the judge had just been made the chief judge of the Southern District of Mississippi, do you remember that?

A. Yes.

Q. And there was a party thrown in his honor, right, a cocktail party?

A. Yes.

Q. And you were invited to attend?

A. Yes.

Q. Your brother was there?

A. Yes.

Q. Carroll Ingram was there?

A. Yes.

Q. George Phillips was there?

A. Yes.

Q. A lot of lawyers were there, other people from the town were there, correct?

A. Yes.

Q. Just a nice time, everybody was very happy about the judge being made chief judge?

A. Yes.

Q. Of course the judge was there?

A. Correct.

Q. You had never met his wife before that night, right?

A. No.

Q. You did meet her that night?

A. Yes.

Q. She is here, seated right here, correct? You see Barbara?

A. Yes.

Q. Do you remember meeting her that night?

A. Yes.

Q. Okay. The judge introduced you to her?

A. Yes.

Q. Okay. And do you remember in the course of your conversation that night that you mentioned to him that you might have another investment that he might be interested in, do you recall telling him that that night?

A. I don't remember telling, I remember telling him or her one, yeah.

Q. Her or him that night, maybe both of them?

A. Yeah.

Q. By the way, there were -- you didn't take them off into a corner or anything, this was done with other people standing around, everybody having a drink in their hand, right?

A. Right.

Q. Okay. I want to stop for a minute, okay? You stayed for a while at that party, assume you left with your brother and that was it, right? You stayed for a period of time and left?

A. Yeah.

Q. I want to go back now. Let's go back to 1980. In 1980, out of the blue, you learn that your son might have been involved in something involving marijuana at the airport, right?

A. Yes.

Q. Okay. Now I understand that whole incident was not something that was very pleasant to you, correct?

A. That's right.

Q. But I must ask you some questions about it, so you bear with me?

A. Yes.

Q. You and your son at the time were not really on speaking terms, right?

A. Not really, no.

Q. Well, as a practical matter, he used to, he and Bob Royals used to have their office at the construction company's office building, right?

A. Yeah, they worked out of there.

Q. Okay. They had a company called F and R, right?

A. Yes.

Q. You for some reason back in 1979 asked them to leave?

A. Yes.

Q. And from that point forward when they left back in 79, you and your son were not talking, correct?

A. Well, our paths just didn't cross.

Q. Your paths didn't cross, but you were father and son, so if you wanted to, you could have had your paths cross; you chose not to?

A. That's right.

Q. And so that the rest of 79 and all of the year 1980 you and he are not on speaking terms, right?

A. That's right.

Q. Okay. There is an arrest -- excuse me, a drug raid, drug arrest that you read about that takes place at the Hattiesburg airport on August 4, 1980, okay?

A. Yes.

Q. Take my word, that's the day. Your son was not arrested at the airport, in fact he wasn't arrested at all, correct?

A. Yes.

Q. You read about it, you knew he had his office out at the airport, right?

A. Yes.

Q. At some point, you learn, don't you, that there is, that he may be involved with, there is some problem he has, correct?

A. Yes.

Q. How did you learn that?

A. I don't remember the details of how I learned it.

Q. Let's see if we can focus in on a period of time, see if we can come to some conclusions. He goes to see, you testified, you knew he had gone with Bill Porter to see George Phillips in Jackson, right?

A. Yes.

Q. Did you know that he was possibly in trouble before they went to Jackson?

A. Yes.

Q. Okay. They went to Jackson in November of 1980, so how long before that did you learn that he might have been in trouble?

A. How long before he went up there?

Q. Yeah.

A. I don't remember.

Q. Okay.

A. Some time, you know.

Q. Did he come and tell you he was in trouble, did Porter mention it, did anybody else?

A. I just don't remember who told me.

Q. Did you know anything about he and Porter going to see Bud Holmes before they went to Jackson?

A. No, I heard about it later.

Q. Okay. I just want to know what you knew --

A. Okay. Okay.

Q. That's fine. I take it there are some things in this whole matter that you learned after the fact, right?

A. Yeah.

Q. I'm trying to just deal with what you knew at the time they occurred, all right?

A. Yeah.

Q. Okay. In any event, you didn't know that they had seen, or you knew nothing about them talking to Bud Holmes, but you knew at some point before they go to Jackson that your son might be in some trouble?

A. Yeah.

Q. He didn't come and tell you this, and you didn't talk to him about it, correct?

A. (Nods yes.).

Q. There was no publicity because his name hasn't, the Fairchild name is not in the newspapers at all at this point, correct?

A. That's the best I remember, yeah.

Q. Okay. How do you learn that they do enter into an agreement up in Jackson with George Phillips?

A. Best I remember, my son come back and told me.

Q. Okay. If you're not on speaking terms, how did he? -- Why did he call you? What do you recall about that? If he told you that it means he's admitting he's involved in something?

A. Well, I just don't remember them details. I found out that he made a deal with George Phillips and I was relieved that that would be the end of it.

Q. Good. From what I understand, your son tells you he made a deal with George Phillips. Correct?

A. Yeah.

Q. You knew George and as far as you knew he was an honorable man, so as far as you were concerned, it was a deal and it was all over with?

A. Right.

Q. One of the things I take it, you were not only happy your son was not going to have to go to jail, --

A. Yes.

Q. That would upset you?

A. Yeah.

Q. — but also there would be no publicity as far as you could see?

A. Yeah.

Q. And there hadn't been. For now it was a dead issue. He made his deal, he was out of whatever trouble he had, he was out of that trouble. Right?

A. I thought he was.

Q. Okay. And that deal was made in the latter part of November of 1980. Okay? We have it here, we have the document. No question.

A. I saw the letter.

Q. Okay. Who showed it to you?

A. Drew brought it to me and I got a carbon copy of it.

MR. FAWER: Okay. Could I have a copy of the memorandum of understanding, the first one, the Government's Exhibit Number 1? There we go. Sorry, it's number two.

BY MR. FAWER:

Q. We don't need you to reread it, this is the document, I take it you read it over at the time, and it had Porter's and Phillips' and your son's signature on it. Right?

A. Yeah. Yeah that's --

Q. The signatures are on the third page, in case you need to see it.

A. Yeah, that's it.

Q. It's dated November 19 and it's all over and done with at that point. Correct?

A. Well, I thought it was.

Q. Okay. December goes by, January goes by, January of 19 -- We are now into 1981. February goes by, 1981. March goes by, April goes by, May goes by, June goes by, everything's fine, there's nothing going on with your son. Right? You're not seeing him but there's nothing going on. Right?

A. Right.

Q. You're not concerned about it in the least?

A. No.

Q. There's no publicity?

A. Right.

Q. One thing that does come about, it doesn't affect your son being in trouble as such but Bill Porter, you learned, has filed suit against your son. Right?

A. Yes.

Q. And he's suing him for $10,000, a legal fee. Right?

A. Yes.

Q. And you read about it in the paper or your son told you or Bill Porter told you or who told you?

A. I think I read about it in the paper.

Q. It bothered you because you just didn't like seeing it in the paper?

A. No, I didn't like it.

Q. It was simply the name Fairchild held up in a bad light.

A. Right.

A. Yeah.

Q. It didn't involve your son being in trouble but your son owed Porter some money or at least that's what Porter claimed?

A. Yes.

Q. Did you then talk to Porter about his bill?

A. I talked to Drew and asked him how much time Porter spent and talked to Bob Royals and they told me how much time he spent and I asked, I asked maybe Bob Royals to talk to Bill Porter and see would he settle for 25 hundred dollars.

Q. Okay. And I take it 25 hundred -- Is that Drew told you he had done, about 25 hours of work?

A. Yeah.

Q. And you figured a hundred dollars an hour?

A. Yeah.

Q. Plus there was some out of pocket expenses. Right?

A. Yeah, a little bit.

Q. Did you write a check for that amount?

A. Yes.

Q. Okay. Did Porter tell you he will take that amount or you just decided that's what you would send him?

A. I think he sent a bill for that.

Q. Do you have a copy of it?

A. No.

Q. Okay. But he agreed to that amount?

A. Yeah, he'd take that amount and cashed the check.

Q. We have the check and we have introduced it, it's for 26 hundred, 26 69, I think. Right?

A. Yeah.

Q. You paid that in July, early July 1981. Okay?

A. Yeah.

Q. All right. Is it fair to say that you actually, -- Well, let me phrase it this way: Are you sure that he had sent you a bill for that amount because the suit was for $10,000, wasn't it?

A. Yes.

Q. So you sent him a check for 26 hundred. Right?

A. Yeah.

Q. And he wanted the rest of it, didn't he?

A. I think that was later on, when he was indicted in state court.

Q. Okay. But you remember there was some conversation where you were being pressed for some more money from Bill Porter. Correct?

A. Yeah.

Q. And Royals talked to you about that?

A. Yes.

Q. After coming back from Maxwell?

A. Yes.

Q. Am I right?

A. (No response.)

Q. Think about it.

A. Drew said he needed to get up 75 hundred dollars and I said, well, they had this F&R oil company and I said you get it all up and get a good price on it and I'll buy it. And that's where he got part, -- and that money went to pay Bill Porter

Q. Let me just understand something. Wasn't there at any time any suggestion made to you that if you didn't pay Bill Porter the balance of the fee, that Drew might get indicted in state court?

A. No, I don't remember nothing about that.

Q. Okay. Did Drew ever mention that to you?

A. No.

Q. Okay. What you --

A. I don't remember him mentioning that to me.

Q. Okay. Fine. You recall, though, that you ended up paying 75 hundred dollars to Bill Porter. Right?

A. Yes.

Q. And what is it, yesterday when you were testifying, you indicated that something about making Drew mortgage his house or something?

A. No, I told him to sell everything that he could sell, except his house.

Q. Except his house?

A. Except it.

Q. Well, as a practical matter, what you asked him to do in order to pay his bill, this 75 hundred to Porter for representing him on the state case, he had just been indicted by the state. Right?

A. Yeah.

Q. And there's a lot of publicity at that point?

A. Yes.

Q. You were upset about it?

A. Yes.

Q. This is the first publicity there is since day one. Right?

A. Yes.

Q. And what you told him to do is that you would give him the 75 hundred, if he assigned over to you a whole bunch of oil royalties that he had?

A. Yes.

Q. Am I correct?

A. Yes.

Q. And let me just show you document, it was not only he who had assigned them over to you, but they were owned by --

A. F&R.

Q. Drew and Royals. Right?

A. Yeah.

Q. Royals had not been indicted. Right?

A. No.

Q. So he assigned the two of them, assigned over to you on September 4, I count some 30, oh, I don't know, interests in 30 different mineral leases and about six other interests, as well. Correct?

A. Yeah, that's it.

Q. In other words, you had him sell to you or give to you in exchange for that money, all of these interests, he and Royals. Correct?

A. Yes.

Q. All right. And how much money did you give him? Did you give him some money beyond the 75 hundred or just 75 hundred?

A. I don't remember. I know that Bill Porter got 75 hundred dollars. But I could have paid him more. I don't remember.

Q. Okay. And how do you date this, you indicate that there's some other event, there was a visit from Royals right after he goes to Maxwell. Okay?

A. Yes, sir.

Q. Now so the jury understands, there was a man named Joe Krohn who was a friend of Porter and Royals. Right?

A. Yes.

Q. His name was Joe Krohn?

A. Yes.

Q. And he was in prison at Maxwell Air Force Base?

A. Yes.

Q. Right?

A. Yes.

Q. And what you recall is a visit from Royals, apparently the Monday or the day after coming back from a visit to Joe Krohn?

A. Yes.

Q. Okay?

A. Yes.

Q. How do you date that or can't you date it at all?

A. I don't, I don't -- I just don't try to keep up with dates, period.

Q. I understand that.

A. But he said that they had been to see Joe Krohn, I don't know whether they had or not, but he said they had, Bob Royals had.

Q. Do you follow football at all?

A. A little bit, yeah.

Q. Alabama-Mississippi game?

A. Yes.

Q. Do you remember talking with Royals about the game that had just been played that previous Saturday?

A. No.

Q. Okay. You don't really recall when this visit from Royals was to you, can you?

A. I can't recall a date.

Q. You can't recall the year?

A. No, I'm not positive which year it was. It could have --

Q. Joe Krohn, let me help you. Joe Krohn entered Maxwell in January of 1981. Could have been in 81. Right?

A. I don't think it could have possibly been in 81 because Bob Royals had been over there to see him a few times before this occasion.

Q. About how many times?

A. Oh, a couple of times that I would think.

Q. How would you know that?

A. Well, he --

Q. Bob told you?

A. He would tell it as I'd run into him, he'd say it.

Q. Bob Royals in 1981, before August of 1981, had been to see Joe three times already. Okay?

A. (Nods yes.)

Q. Sound about right?

A. Well, yeah. Yeah.

Q. He saw him in August of 1981 and he saw him again in September, September 13 of 1981. Okay?

A. (Nods yes.) Yeah.

Q. So that could have been, I take it, as far as you know, he'd already seen Krohn a few times, it could have been that August or September visit, right after that that he comes to talk to you and has the conversation that you described yesterday. Right?

A. Well, it was after one visit he had over there.

Q. Okay. I'm just trying to help you try to figure out when it was.

A. Well, anything that -- I just don't try to keep them in my head.

Q. I realize that. All I can do, since I wasn't there, is try to take the events that you say occurred around it, and help you if I can. If not we'll just go on from there. Okay?

A. (Nods yes.)

Q. But we do know that he visited Joe Krohn several times in 1981 and then visited him again on Sunday, August 2, and Sunday, September 13 of 1981. So I take it his visit that he described to you could have been the day after that?

A. It was the day -- It was on a Monday after he had visited on a Sunday.

Q. Okay. I take it the only other person who would know this would be Bob Royals, who could help us on that?

A. Yeah.

Q. Nobody else was there for this visit that you described?

A. No.

Q. Okay. And it was a visit in which -- What did he say to you? What is it that Porter wanted more money?

A. He, you want me to repeat what I said yesterday.

Q. I want you to tell me what you recall of that conversation. Let me ask you a question before I come to that. Have you memorized certain conversations? Have you tried to memorize certain conversations?

A. Some that I think are very important that I remember as --

Q. Who has told you that they are important?

A. Well, I knew they was important. Nobody has told me that.

Q. When you say this conversation with Royals was important because, to you, because it stuck out, it angered you. Right?

A. Yeah, because I was angry with him because I think he was trying to blackmail me.

Q. Okay. Tell us again what you said. I know what your answer was, it wasn't no, it was hell, no. What did he say?

A. He said -- He and Bill Porter went over to see Joe Krohn and on the way back, Bill Porter says that if Drew would get up off his money he'd come clean with this. And Bob Royals says, well, Drew don't have no money. He says, well, his old man does. He says, yeah, but that's not his money, it's the old man's. And he said, well, if his old man knew he was going to get his tail in the crack -- that wasn't the exact words but --

Q. Excuse me. Going to get his tail in a crack?

A. If the old man knew he was going to get his tail in the crack, he would get up off his money.

Q. Okay. Now in August of 1981, Drew was indicted in the state court. Correct? August 26.

A. Well, yeah, if that's the way it was.

Q. No question that's the date.

A. Okay.

Q. After that he had already gotten his tail in the crack. Right? Got indicted. Correct?

A. (No response.)

Q. Do you understand my question?

A. Yeah, he got indicted in state court.

Q. Listen to what I'm asking you. Bob Royals is telling you at this visit that if you don't get up off your money, your son could get his tail in a crack. Right?

A. Yes.

Q. He had not, he had not been indicted in federal court, as far as you knew that problem was all over with. Right?

A. Yeah.

Q. Okay. Porter, before the indictment in August of 81, was still complaining that he had not been paid the 75 hundred dollars. Right?

A. Not to me.

Q. Well, you knew, but you knew he had sued Drew for ten thousand?

A. Yes.

Q. You tried to get him to take 25 hundred. Right?

A. Yep.

Q. 25 hundred is not ten thousand. Right?

A. That's right.

Q. And he was passing a message along wasn't he, that unless that 75 hundred was paid, your son is going to get his tail in a crack?

A. He didn't mention 75 hundred.

Q. He meaning Royals?

A. Yeah. Royals didn't mention 75.

Q. I understand that. He's telling you, though, if you don't get up off your money, your son will get his tail in a crack. Am I right?

A. Yeah.

Q. Now when the 75 hundred is paid -- your son is indicted on August 26. Correct?

A. Yeah.

Q. You do pay Porter 75 hundred on September 3, 1981. Am I correct?

A. Yeah.

Q. And as far as you knew and Drew knew, this 75 hundred was going to take care of the problem in the state court. Correct?

A. Yes.

Q. Okay. So the conversation with Royale is in all likelihood took place just before the state case and the events that happened shortly after that visit is the indictment of your son and the payment by you of the 75 hundred dollars to Porter. Correct?

A. The best I remember when he was out there he had already been indicted in state court.

Q. Tell me what makes you think that. Let me ask you another way. I know that's what your best recollection is, at least you're saying that --

A. Well, that --

Q. -- the 75 hundred to Porter, as far as you know, was to take care of the state case. Right?

A. Yes.

Q. Okay. In January of 82, let's just jump five months later, he's indicted in August, pleads got guilty in September with Bill Porter who got 75 hundred that day, and by January 12 of 1982, your son with Bill Porter has made a deal with Bud Holmes. Right?

A. Yes.

Q. That he will get no jail time, probation and a $5,000 fine.

A. Yes.

Q. Right?

A. Yes.

Q. As far as you knew there was not going to be any problem then, even on the state level?

A. Right.

Q. What is it that you're thinking in your mind that could have still been a problem on the state level after the deal was already made?

A. There's no question in my mind, when Bob Royals come out there, it was, he was trying to blackmail me.

Q. I hear that. It sounds like it was. But it sounds to me like he was trying to get from you an amount of money for his friend Porter. Porter was his good friend, wasn't he?

A. Yes.

Q. You didn't think, I mean you now know or you knew at the time I guess that Royals may have in fact been involved with your son in the trouble at the airport. Right?

A. Yes.

Q. If your son -- There's a story about the son, Royals, who has not been indicted, could get into trouble too. Correct?

A. Yes.

Q. He's talking to you about, you know, getting off your money to take care of Porter so there's nothing, nothing more happens. Isn't that what he's telling to you? It sounds like blackmail.

A. If he had a told me that you better get Bob Royals -- You better get Bill Porter's other, the rest of that $10,000, well, I would have remembered it.

Q. He didn't necessarily say that to you? He may not have known what the numbers were.

MR. WEINGARTEN: Your Honor, I'll object to the line of questioning.

MR. FAWER: I will rephrase the question.

BY MR. FAWER:

Q. You're saying if he said that to you, it wouldn't have bothered you as much?

A. Well, the best of my recollection that the seventy-five hundred dollars had already been paid when I, when he come out there.

Q. Can you tell the jury, though, when he says your son is going to get his tail in a crack, how can it be after he's already been indicted in the state court, has already made his deal with Bud Holmes?

MR. WEINGARTEN: I object, asked and answered about three times, Your Honor.

MR. FAWER: I've never asked the question.

MR. WEINGARTEN: In the same form.

THE COURT: Sustain the objection, it's repetitious.

BY MR. FAWER:

Q. Do you know of any additional problem that your son got into other than being indicted in the state court?

A. No.

Q. Okay. And that was in August and he pleads and cuts his deal with Bud January of 82, right?

A. Yes.

Q. Okay. Now, you had, there was some publicity as we indicated. The first publicity was in August when he was indicted and that made you upset?

A. Yes.

Q. And then when he pled, brought into court and he was arraigned, that upset you a bit, right?

A. Correct.

Q. Then in January when he entered his plea of guilty, remember when he had two minutes to plead?

A. Right.

Q. It upset you he had two minutes but there was also publicity and the name Fairchild spread on the paper again, right?

A. Yeah.

Q. Then really for a year the publicity disappears, your son is in the hospital in Oschner for a period of time, right?

A. Yes.

Q. And Watkins -- by the way, you knew there was another person that was indicted with him, right?

A. Yes.

Q. That was Watkins?

A. Yes.

Q. That was the pilot?

A. Yes.

Q. Okay. He was a fugitive, right?

A. Yes.

Q. And they were waiting for Watkins to be found and brought back to trial before they sentenced your son, right?

A. That's what I understand, yes.

Q. But for a long period of time, there was no publicity because there were just continuances going down the road,

right?

A. Yes.

Q. Your son got continuances for back operations, for recuperating and to get Watkins back here, right?

A. Yeah.

Q. Okay. By the way, he pled in January of 1982, some publicity at that time as you've told us. In February and March he's in the hospital in Oschner, did you go over to see him when he had the back operation at all?

A. No.

Q. It was over in New Orleans, right?

A. Yes.

Q. In March he's in the hospital recovering, there is no problem with the publicity, and no problem with the state, correct?

A. Yes.

Q. Same thing in April and May, from what Drew tells us he was recuperating for about six months from that serious back operation, right?

A. Yes.

Q. Did you ever see him at all during that period while he was recuperating?

A. I think I did, but I don't recall whether it was at the office or anywhere.

Q. There was no problem with his state case all that period of time, right?

A. No, that's right.

Q. All right. The first time, the next thing that you recall happening, if I'm not mistaken, with his case, is Carroll brings to you a document passing the case to the file, right? Right around Christmas of 1982?

A. Yeah.

Q. Correct?

A. He brought me the document, yeah.

Q. And you were still on good terms with Carroll or were you having a problem with him then?

A. I was still on good terms.

Q. Okay. And he brings, there was a document that said -- what's the number. This is the document he brought to you, didn't he, said Merry Christmas, brought you a document signed by Jack Weldy just before he left office, right?

A. Yes.

Q. You looked at it and you were pleased, right?

A. Yes.

Q. And you hadn't seen any publicity on this thing in a long, long while, right?

A. Yes.

Q. Am I correct?

A. I don't recall there being any.

Q. Let's think about it a minute. He pled back in January, cut his deal, right? January of 82. This is now December of 82, he was in the hospital recuperating, looking around for the fugitive, there is no publicity for a whole year, things are real quiet, right?

A. Well I don't know whether there was any publicity or not. I don't think it wasn't a year here without some publicity.

Q. Can you tell us of anything that would have generated some publicity, until this happened?

A. Well, I know Marvin Rubin down at Viewpoint on the radio station to the effect that something was, wasn't right because that, I don't remember when that was, and that upset me.

Q. Just saw it. Marvin Rubin got on radio and complained, why was the case being passed to the files, right?

A. Yes.

Q. Let's stay where we are. Carroll has brought you this present, simply passing the case to the files, right?

A. Yeah.

Q. You had no -- had you ever heard of a case being passed to the files? You had never been involved in any criminal proceedings, right?

A. No.

Q. As far as you knew -- by the way, you gave a copy of that to Drew's wife, right?

A. Yes.

Q. You weren't talking to Drew, but you were on speaking terms with his wife, right?

A. Yes.

Q. And you gave her a copy, in effect, being nice in effect, saying look, show this to Drew, correct?

A. Yes.

Q. Okay. And you had no -- who told you that passing a case to the files meant it went away? Anybody?

A. Well, I just taken it for granted it went away.

Q. You wanted to believe that, you were taking it for granted, and that's the way you were operating, perfectly normal, right?

A. Yeah.

Q. Particularly since you're not a lawyer and you don't understand these things, right? But then out of the blue, Christmas passes, New Year's goes, two days later the papers pick up that that case was passed to the files, right?

A. Yes.

Q. And the name, what name is on the front page?

A. Drew Fairchild.

Q. Okay. Could I have, what's the number, publicity, January 7th? Let me show you, did you read the Hattiesburg, when there would be something about this case would you read it in the Hattiesburg American?

A. Yes, if I was in town.

Q. Okay. Let me show you, January 7th, Defendant's Exhibits 6. Out of the blue, Weldy passes to inactive file Fairchild drug smuggling charge, right?

A. Yes.

Q. You knew it already, nobody else had known it until it hit the newspapers, right? Were you happy about that or a little upset it was in the papers?

A. Well, I was upset when it was in the papers.

Q. Okay. That's reasonable, that makes sense, right. Did you read this article, do you remember reading this article?

A. I'm sure I read it. I'm sure I read it.

Q. All right. Let me ask you another question, this is when Marvin Rubin, whoever it is on the TV news are sort of questioning why this was done, right?

A. Yeah.

Q. I notice at the end of the article it even says, a case that has been passed to the files can be reopened for further action so Fairchild, that means Drew, continues to face the possibility of eventually being sentenced. Did you read that?

A. Yeah.

Q. You saw it, I take it you realized that's not what you understood, but that's what it was saying there in the paper?

A. Yes.

Q. Did you check whether that was accurate or what you believed was accurate, or did you do nothing?

A. Well, I was concerned about it, and I thought that would be the last of it.

Q. Okay. But you were wrong?

A. Yes.

Q. That same month, I mean you thought that was a big headline, that wasn't on the front page. You were going to make the front page on January 27th when the case is brought back to the active status, right?

A. Yeah.

Q. And there it is, Fairchild case returns to active files, right?

A. Yes.

Q. Would it be fair to say that, mad would be one way of describing yourself, right?

A. Yeah, I was upset, terribly upset.

Q. Furious?

A. Well, I was real upset.

Q. Okay. Here was this case which you thought, first you heard, first you thought the case had been taken care of with the agreement with George Phillips, right?

A. Yeah.

Q. Then out of the blue he gets indicted in state court, right?

A. Yeah.

Q. You thought there was some shenanigans going on then, right?

A. Yes.

Q. Then he makes a deal with Bud Holmes, that's Drew and Bill Porter make a deal with Bud Holmes and I think it's all over, right?

A. Yeah.

Q. Then the case gets passed to the files in December of 82, only to be brought back a month later, right?

A. Yeah.

Q. And in the midst of this, some place you recall, somebody is blackmailing you, right?

A. Well, that's what I believed.

Q. You thought that person was Bud Holmes?

A. Yes.

Q. I mean that's who was bringing it, moving to push it to the files, bringing it back, that's Bud Holmes being quoted in there, that's whose name is being associated with this, right?

A. Yes.

Q. Tell us something else. Why is it do you think Carroll Ingram was involved also? Because he brought the copy of that out to your house?

A. Well, I gathered from Carroll when he brought that out, that out, that would be the end of it.

Q. So when it wasn't the end of it you thought therefore Carroll was involved with Bud in pulling some sort of a blackmail or shake down on you?

A. Well, I was suspicious, yes.

Q. And your suspicions started to build inside you, right?

A. Yes.

Q. This is the first real publicity in a year from the time he had cut his deal and pled in January of 82 -- excuse me, January of 1982, this is the first publicity in January of the following year, correct?

A. Yeah.

Q. And you're some angry, suspicious, you think someone's blackmailing you, namely Holmes and Ingram, right?

A. Really I thought Ingram was working behind the scene in it, yeah.

Q. Did I describe accurately your state of mind?

A. Yes.

Q. All right. Let me ask you something. I gather at one point, I'm not again trying to pry, believe me, but at one time, like many others you did a fair amount of drinking, correct?

A. Yeah.

Q. You've been on the wagon now for some time?

A. Well, sometimes I go on the wagon, yeah.

Q. Would you, during this period of time, were you doing some drinking, early 83?

A. I don't remember.

Q. How do we date it, anyway?

A. When Skip come out there I was on the wagon then, when he come out there.

Q. That's a year later, that's in April of 84?

A. Yeah, okay.

Q. How long had you been on the wagon then?

A. I don't remember.

Q. Three or four months?

A. Yeah.

Q. So is it fair to say most likely in the previous year you were doing some drinking?

A. Yeah.

Q. Again, believe me, I'm not trying to pry, I have some vices, I do some drinking. It's important I understand, would you drink during the day or evening, when would you do your drinking?

A. I start at five-thirty.

Q. And keep going to when?

A. Until six.

Q. And beyond that?

A. I eat and --

Q. Go to bed?

A. Go to bed.

Q. So that by seven o'clock or so you've had a fair amount of drink, eaten, am I correct?

A. I got a little old brown bottle, with a funnel. I fill that bottle, I drink, watch the NBC news, eat, and go to bed.

Q. Okay. When you've drunk that, when you've had that -- how much is that to drink? Doesn't sound like that's a lot to drink?

A. Well, it's about six high balls.

Q. Sounds like a decent amount?

A. It's enough.

Q. It will do a number?

A. It will what?

Q. It can make you a little bit -- a little bit of a buzz, right?

A. That's what I drink it for.

(Laughter.)

Q. I would hope so. Nice way to go to sleep, right?

A. Yeah, it helps do that.

Q. But it doesn't, I take it, you do it after work because that way it doesn't affect what you're doing, doesn't affect your work, doesn't affect you the next day very much, and if you're a little woozy before you go to bed, doesn't make any difference, right?

A. No, that much I drink don't, don't affect me.

Q. Okay. Doesn't help your memory or anything at the time, but it doesn't seem to stop you from thinking, correct?

A. That's right.

Q. In any event, we're in early 1983 and you're terribly, terribly upset. So upset at Holmes and Ingram that you want to talk to someone about it, right?

A. Yeah.

Q. And you're thinking, who can you talk to, can't talk to Ingram because you think he's part of it, right?

A. Yeah.

Q. You're looking for some one to talk to?

A. Yeah.

Q. You are angry at Ingram, right?

A. Yes.

Q. Let me suggest what occurs at that point. You remember the judge stopping by in your office just to see you; done it the year before just as he had done before on a number of occasions?

A. I remember him stopping by, yeah.

Q. You remember he came to you sometime in February, right after this, February or early March of 83, when this was boiling up inside you, do you remember that?

A. Yeah.

Q. And you sat and talked a little bit about the wells, just generally, the fact they were slowing down a little bit, and you mentioned to him the fact, out of the blue, about your son, excuse me -- about the fact that you were being blackmailed by Holmes and Ingram. Do you remember that?

A. I remember seeing, that's what I believe, that's the way everything looked.

Q. Do you recall, it's important that we -- Wiley, we really need to focus in on this. You're behind your desk. Is he in front of your desk?

A. Yes.

Q. In a chair, right?

A. Yes.

Q. Relaxing?

A. Yeah.

Q. You're angry, you want to -- to you, this is a man who is a judge, right?

A. Yes.

Q. He's, he's a fair man and you'd like to see if there is something -- you want to get a message over to Bud Holmes, you want to let what's inside you out, correct?

A. Yes.

Q. And you tell him about, in the way you speak, you're being blackmailed by Bud Holmes, right?

A. I told him I believed that's the way --

Q. Believed you were being blackmailed by Bud Holmes?

A. Yes.

Q. Maybe even Carroll Ingram?

A. Yes.

Q. Well, you knew he was a good friend of Bud Holmes?

A. Yes.

Q. And of course he knew Carroll Ingram, because Carroll is how he got into the investment?

A. Yeah.

Q. You had never once before ever discussed Drew's case with him for one second, correct?

A. No, I never discussed Drew's case.

Q. And out of the blue, you're telling this man something about blackmail by two good friends of his, right?

A. Yes.

Q. And you even, you don't ask him to do a thing, am I correct?

A. That's right.

Q. He doesn't even know at that point precisely what you're talking about. Let me withdraw that, that's asking to you conclude what's in his mind and that is not fair. You're telling him this out of the blue, and you're not giving him all the background that you've been living with for the past two years or year and a half, correct?

A. I was getting to the point, yes.

Q. Okay. And you complain about, you don't complain at all about wanting anything for Drew's case, you want Royals indicted, am I right?

A. I didn't -- I figured that, Drew's was indicted because he was my son, I didn't like it because it picked on my son because I had money. Bud Holmes, Bob Royals is good friend, he's a pilot for him, and that's why I said about if they'd go ahead and indict Royals and prosecute him, wouldn't hear a damn word out of me.

Q. Let me just point something out. There is a lot of thinking that you have done about this matter over the, before this meeting with judge and after it, correct? A lot has gone on in your mind that you haven't necessarily talked to anyone about, correct?

A. That's probably so.

Q. Okay. What we're here needing to talk about or hear from you, not what's going on in your mind at the time, but what you said to the judge. Now you told us, do you understand what I'm saying, the distinction?

A. (Nods yes.).

Q. I don't want you to mix the two together, okay?

A. Okay.

Q. You told him out of the blue that Bud Holmes and you think even Carroll Ingram are blackmailing you, right?

A. Yes.

Q. You don't ask him to do anything about Drew's case, correct?

A. That's correct.

Q. You have never spoken to him before about Drew, correct?

A. That's right.

Q. And you say something about wanting a man named Royals indicted, correct?

A. No, I didn't say I wanted him indicted. I --

Q. Go ahead, I'm sorry?

A. I said if they will go ahead and indict him and prosecute him ---

Q. Wouldn't hear --

A. You wouldn't hear a damn word out of me, they were both guilty.

Q. You're saying Drew's guilty, and if they prosecute Holmes you, excuse me, prosecute Royals, then you wouldn't hear a word out of me?

A. Right.

Q. Okay. That's it? That's what you say?

A. That's what I said.

Q. As far as you knew, he had no awareness of who Royals was, correct? Royals isn't a relative of yours, right?

A. Right.

Q. It's just a name, correct?

A. What's just a name?

Q. Did you know whether this man had any awareness of who Bob Royals was when you spoke to him?

A. I didn't know whether he would recognize the name or not. I knew that Bob Royals was in the plane when he flew him, he mentioned about flying him somewhere.

Q. Who mentioned?

A. Bob Royals.

Q. You mean Royals may have been a pilot in a plane at one time, and that the judge was on the plane?

A. Yeah.

Q. Do you know pilots, the name of all pilots who have flown you?

A. No.

Q. Okay. Royals -- had never been a word in the paper about Royals being associated in the drug bust, correct?

A. Correct.

Q. Okay. So you have this -- how long did this take, a minute or two? The conversation you described?

A. The conversation with --

Q. The judge?

A. Yeah.

Q. Where out of the blue you're saying I'm being blackmailed, there is nothing I'm asking for for Drew, but it's not fair, I wouldn't complain if they indicted Royals, correct?

A. That's what I said.

Q. And you didn't even, you didn't ask him to do anything for you, correct?

A. No.

Q. Am I right?

A. Yeah.

Q. Okay. And what you said is that you don't recall him saying anything, he may have shook his head or grunted --

telling you what I heard you say yesterday. That's all you recall, shook his head?

A. He, I knew he got the message.

Q. Okay. In the grand jury you were asked about this on November 28th, and you said that he didn't, what you said he said, I can show you your testimony, he shade, quote, well let me say, let me mumble some words. Judge said let me mumble some words? Do you want to see your testimony? Page 17, do you want to see your testimony, sir?

A. Yeah.

Q. Sure. Let me put an exhibit tag on it. Mr. Fairchild, I'm showing you Page 17. Free to read any of it, but it's the page where you describe the conversation, as you have today, then at the bottom, the question is asked to you, what did Judge Nixon say, do you see that?

A. Yeah.

Q. Read to the jury what you say he said?

A. Well, he said, well let me see, let me mumble some words.

Q. That's what you told the grand jury he said to you, let me mumble some words?

A. Well, he mumbled, he said --

Q. That is what you told the grand jury, right?

A. Yes, that's looks like what I told the grand jury.

Q. So I understand, I know you, you've never seen that before, but that is an accurate, everybody will agree that's an accurate transcript of what you said, okay? That's a recording of what you said. Okay. And now you just tell us, let me, you don't even recall anything he said as you sat on the stand here yesterday, right?

A. Well, it just don't, not just alert, up to it --

Q. Nobody is finding fault with you, okay. We just need to ask a few questions about it. That, I mean did you go on and talk about some other things on that occasion? Did you ever talk hunting with him? Ever talk about hunting with the judge?

A. We probably have, but I don't --

Q. You know the judge, he hunts a lot, right?

A. Yeah.

Q. Do you like to hunt, did you hunt at one point in your life?

A. Yeah, but I don't now.

Q. Remember spending time that same day talking about hunting?

A. I can't recall.

Q. Let me refresh your recollection. Do you recall the turkey season was coming up, judge talking about going turkey hunting that year?

A. I don't remember it, no.

Q. Okay. You do have some recollection sometime talking about hunting with the judge?

A. Yeah, I have faint memory of it.

Q. Okay. But I take it you had this brief conversation that we've been spending a fair amount of time on, but you said a few things, he said nothing, and you went on and talked about a few other things while he sat there, right?

A. Yes.

Q. One thing is clear to you, isn't it, now that you think about it. You wouldn't have called Carroll to bring him out so you could complain to him about Carroll shaking you down, right?

A. Yeah, I could have done that.

Q. Still would have done that?

A. Yeah.

Q. Do you recall that, was it equally likely he would just have dropped in on you as he had done in the past and you chose that opportunity to talk to him?

A. No, I had sent for him.

Q. When you say sent for him, do you send for federal judges very often?

A. No.

Q. When you say sent for him, is that the same as asking somebody, asking somebody if they could get ahold of him and have him come to your office if he could?

A. Yeah, the best I remember that I asked Carroll to get ahold of him.

Q. Have you checked at all with Carroll about that?

A. No.

Q. Ever discuss it with him?

A. I hadn't talked to Carroll in two years.

Q. Okay.

A. Two and a half.

Q. But I guess once again the person who could help us on that as to whether or not you spoke to Carroll about the judge coming over to your office is Carroll, he could testify just like you are, right?

A. Yes.

Q. He could help us on that, right?

A. I would think so.

Q. Okay. Have we pretty well -- Well, let me come back to something. The Judge leaves, you, I take it -- Do you recall whether that was in the morning or the afternoon or don't you have any recollection?

A. Oh, yeah, it's in the afternoon.

Q. Afternoon, you head on home to watch the news like you do everyday?

A. Yeah.

Q. You watch the news and the sports and knock down a few toddies?

A. Yeah.

Q. About six?

A. Yeah.

Q. Okay. Six is the average. Right?

A. Yeah.

Q. Your wife is at home?

A. Yeah.

Q. And you have something to eat, and you're sort of ready to go to bed. Right?

A. Yeah.

Q. In fact are you in bed already when the phone rings?

A. Yeah.

Q. Okay. And you don't like being being annoyed when you're in bed already but does your wife answer the phone all the time or do you?

A. Oh, sometimes she answers it and sometimes I answer it.

Q. In any event you recall speaking to the judge. Right?

A. Yep.

Q. And speaking to Bud Holmes?

A. Yes.

Q. Okay. You have been rather, you have a recollection, as I understand it, you have been rather vague as to when various things occur. Do you have really a specific recollection of talking to the judge that evening before Bud, as opposed to Bud first and the judge second?

A. Oh, I talked to the judge first.

Q. You're sure of that?

A. I'm positive.

Q. Well, you were positive about some other things. I just want to ask you about this. You were positive the wells were on line also on February in 81, didn't you?

A. I thought they were, yeah.

Q. And you were wrong, weren't you?

A. Yeah.

Q. Let's talk about the order of people you talked to that night. The whole thing lasted what, a minute?

A. A couple of minutes.

Q. And you had six drinks in you by then. Right?

A. Yeah.

Q. And you talk to two men, both of approximately the same age and you have a concrete recollection you spoke to one before the other?

A. Yes. Positive.

Q. Why? I'm just curious.

A. Because the conversation was so important to me.

Q. Okay.

A. I thought that was the, for once and for all, that was over with.

Q. Well, you say it was so important to you. It was so important to you because the Judge is supposed to have said what?

A. Says, you know that, you know that man that we talked about this evening. I said, yeah. He said I'm at his hosue.

Q. You understand that to mean Bud Holmes? You knew that he meant Bud Holmes?

A. Yeah.

Q. Go ahead.

A. And he said, I talked to him and everything going to be worked out to your satisfaction.

Q. Okay. You had asked -- I'm a little bit confused because you had complained about Bud and Ingram blackmailing you and you weren't claiming at all about, you didn't want anything done for Drew, but what you wanted was Royals indicted, if anything. Right?

A. Well, I was bringing Royals up because I believed that

Carroll and Bud Holmes knew good and well that a, that Royals was involved and I was trying to raise a sting about it, something might, you know, that I might go to the news media, you know.

Q. You weren't threatening to go to the news media, that happens later, doesn't it?

A. Well, I was thinking about it at that time.

Q. Between what you think and what you say is different. Correct? Am I correct?

A. Yeah.

Q. So it's important that the jury understand when things occur. You did threaten to go to the news media at least you talked to some people about it in December of 83, we are now in the early part of 83. Correct?

A. Yes.

Q. We are right after these newspaper articles hit the stands. Right?

A. Yeah.

Q. Okay. So what you really are looking is for somebody, I mean, you really want somebody else to get himself in the crack, maybe Royals. That will make you feel a little better?

A. No, no, I didn't want him to get it.

Q. What was it that you wanted?

A. I wanted Bud Holmes to live up to what he said would happen.

Q. Okay.

A. That him and Drew, Bob and Porter had said would happen.

Q. What they said would happen is that your son, who had already pled guilty would not get any jail time. Right?

A. Yeah.

Q. He hadn't gotten any jail time, they hadn't sentenced him yet?

A. Yeah, but they said nothing would come of it if they got the other 75, that would be the last you would hear about it.

Q. Just so the jury understand it, you're now referring back to an event back in September of 81. Correct? That's what you paid the 75?

A. Yeah.

Q. That Porter had told you then, Porter and Royals, that if they paid the 75 hundred, the remaining 75 owed to him, nothing would come of it. Correct?

A. I don't remember whether Porter was in on it or not, but Drew and Royals had told me that.

Q. Well, so we know something --

MR. FAWER: Could I have the 75 hundred dollar check, please? I want you to see a document so you don't have any problem when you paid that check it's important you don't take dates and telescope them and mix them all together. Okay?

BY MR. FAWER:

Q. Your name is Wiley Fairchild, you have an account at the

Bank of Hattiesburg. Right?

A. Yeah.

Q. The 75 hundred check payable to Porter. Right?

A. Yeah.

Q. September 3, 1981.

A. Yeah.

Q. So anybody who says to you if you pay the 75 hundred, the case can be taken care of, that would have occurred before September 3, 81. Correct?

A. (No response.)

Q. Do you understand the question?

A. No.

Q. Then I'll ask it again, sir. Maybe I can come at it another way. You believe they told you, you believe it was Porter, you don't know if it was Porter but Drew and Royals told you if Porter got his 75 hundred --

A. We'd never hear no more about it.

Q. Okay. He got his 75 hundred from you on September 3. Right?

A. Yes.

Q. Therefore that statement was made to you before you gave him the 75 hundred. Right?

A. Yeah. Yeah, I would say.

Q. In fact it was made to you before your son was indicted a week earlier.

A. (No response.)

Q. Do you understand?

A. Yeah, I understand. I didn't --

Q. You need to put the dates together. They're crucial.

A. Well, I thought this was paid to Porter.

Q. It was. His name is on it --

A. After he was indicted.

Q. It was paid five days, seven days after he was indicted?

A. Yes.

Q. Okay. The message that came to you, if you pay 75 hundred, it will be taken care of. Right?

A. Yeah.

Q. So at worst, it had to happen between the date he was indicted on August 26. Right?

A. Yeah.

Q. And the date you paid him?

A. Yeah.

Q. Once you paid him, you believed it would all be taken care of?

A. Yes.

Q. Right?

A. Yeah.

Q. In fact in June of 82, five months later, it seemed to be in the sense that your son pled guilty in exchange he would get no jail sentence. Right?

A. Yeah.

Q. $5,000 fine and some probation?

A. Yes.

Q. Okay?

A. (Nods yes.)

Q. Then the only thing that happened, it just hung oh, waiting for the sentencing. Right?

A. Yeah.

Q. And you're not a lawyer, you don't understand why it hung oh, but what bothered you is for all of a sudden in January of 83, these two bombshells hit in the newspaper. Right?

A. Yeah.

Q. And that's when you went and took the opportunity to speak to Judge Hixon. Right?

A. Yeah.

Q. Okay. You're comfortable with what you have just described. Right?

A. That's the best of my recollection.

Q. And you're standing here or sitting here under oath and that is the best of your recollection, based on, for the first time, anybody has shown you all of the documents which can help your mind. Right?

A. I think that's a fair statement.

Q. Okay. Nobody's ever bothered to put you through the questioning, no one's ever asked you to run through the dates logically as you have done with us, and I appreciate it, today. Correct? No one's ever done that before with you. Right?

A. No.

Q. In the end of 1983, in December of 1983, long after this, Bud Holmes was about to go out of office. You remember that?

A. Yes.

Q. And he had contacted -- Bill Porter had died the month before. Right?

A. Yes.

Q. In November Bill died in the plane accident. Correct?

A. Yes.

Q. In December Bud contacted Drew and said that he wanted to get this thing over with before he left office. Right?

A. Yeah.

Q. And Drew reported that to you. Right?

A. Yes.

Q. Made you upset because for some reason you thought it was all over with. Right?

A. Yeah, I thought it was all over.

Q. Okay. And the next day, that night, you threatened, in fact you called Carroll Ingram and told him you were upset and you were going to go to Marvin Reuben and the newspaper or the TV station. Right?

A. Yes.

Q. And the next thing you know, Bud Holmes and Judge McKenzie came to see you the following day early in the morning at the office. Am I right?

A. Yes.

Q. Judge McKenzie's the same judge that reinstated it to the file. Is that right?

A. Yes.

Q. And Bud said to you that day, look, I'm Bud Holmes, I'm the only one who knew what the plea agreement was other than Porter because Porter is now dead. Right?

A. Yeah, Porter was deed.

Q. And Bud made the agreement with Porter, right, the plea agreement?

A. Well, I don't know whether he had or not. I was under the impression it would be passed to the files with prejudice and that would be the end of it.

Q. I've heard you say that.

A. Okay.

Q. You say what's in your mind, but I need to find out some events and then we'll deal with that. In December of 83, that's two years after your son had pled guilty and Porter represented him and they made a deal with Bud that he would have no jail time, probation, $5,000/F fine. Right?

A. Yeah.

Q. The case was then continued, and continued, continued, and then was removed to the files, inactive files, brought back in early December -- excuse me, early January, 1983 and now we are at the end of the year 1983, Bud's about to leave office. Right? You knew that?

A. Yeah.

Q. Someone else was taking over the job. Right?

A. Yeah.

Q. He's telling you, look, let's take care of the sentencing of Drew now, before I leave office, so that I can live up to my commitment. Right?

A. He said something to Drew to that effect.

Q. He came to see you, that morning, came with a judge, came to your office with the Judge who would be presiding at the sentence. Right?

A. He didn't say nothing about itmgoing through with that.

Q. What did he come to you for?

A. He come to me and he said, Wiley, I want you to get ahold of Drew, said nobody's after Drew, says nobody's after Drew. Says the Judge here could sentence him to 20 years and nobody would get it, says, I don't want you to go to the press as they get things all screwed up and never would hear the last of it.

Q. Let me ask you something. Wasn't he trying to tell you that he was not backing off the agreement he had made with Bill Porter?

A. He didn't mention that.

Q. That's not what he was talking to you about?

A. No.

Q. He wasn't saying, I'll be happy, even though your son hadn't testified yet, to let him be sentenced so it happens before I leave office?

A. No, he didn't say that to me.

Q. I guess one person who could testify to it is Dick McKenzie, he's living, well in town, right, hearty and hale, living here in town and he could tell us what was said in your office in his presence that day?

A. Yeah, and my brother Rodney Fairchild. I had him sitting there.

Q. He can testify, too. Only problem is I think he's been sitting in the courtroom, hasn't he?

A. Yes.

Q. Here now?

Fuwa

A. No.

Q. Now, as I understand it, you told us, we have described the events as best you can recall them happening. Right?

A. Yes.

Q. Everything fits as best you can with your memory. Right?

A. Yes.

Q. Okay. So when the judge is out there, when you see the Judge in early 83, you're angry because this is, all this publicity because the case had gone to the files and came back off the files. Right?

A. Yeah.

Q. Well, then we got to come and ask some questions, additional questions about your testimony, because you told the Grand Jury after you pled, you suddenly changed your testimony, did you not, and told the Grand Jury under oath that what happened after you spoke to the judge is that the case was passed to the files, didn't you? You told that to the Grand Jury.

A. Yeah.

Q. You told it to us here today. And you were wrong both times, weren't you?

A. Well, I thought it was passed to the files.

Q. I believe you. But it wasn't what happened. It had already gone to the files and come back off the files, too, hadn't it, sir?

A. Well, I knew it had come back, yeah.

Q. Well, if it had already come back then it couldn't be, then the conversation with Judge Nixon couldn't happen before it went to the files, could it?

A. Well, when I had this conversation with Judge Nixon, it had not gone to the files.

Q. Sir?

A. I'm positive of that.

Q. Sir, you just told us this is what caused you to call Judge Nixon?

A. Well, I said it could have been. I don't remember as I said yesterday what got me upset.

Q. There was no other publicity. Can you tell this court, can you tell this jury of anything that would have happened until that publicity there that would have upset you, to cause you to say what you did to the judge?

A. Well, I know that something caused it.

Q. Well, that's wonderful, Judge -- Excuse me, Mr. Fairchild, but we are in a court and he's on trial for his life and I need you to tell me what it could have been aside from this, could have made you so upset as to talk to the Judge about the blackmail of Holmes and Ingram?

A. Well, it was something concerning it.

Q. You told us, under oath, in the last 15 minutes, about seven different ways in which you said, yes, it happened after these newscasts?

A. Well, I don't know these specific newscasts but something --

Q. The events reported in those newscasts.

A. Well, I know that when I talked to Judge Nixon, that they had not been passed to the files or I would not have mentioned it to him.

THE COURT: Gentlemen, let's take a recess.

MR. FAWER: Could I just ask one question before we do that? Just one question.

THE COURT: All right.

BY MR. FAWER:

Q. You mentioned to Judge Nixon passing it to the files? Did you ever testify about that?

A. I didn't mention it to Judge Nixon about being passed to the files.

Q. What did you just say? You said you wouldn't have -- that's all, we'll come back to it in a couple of minutes. Remind me.

(Recess.)

THE COURT: Proceed.

MR. FAWER: Thank you, Judge.

BY MR. FAWER:

Q. Mr. Fairchild, let's pick up if we can where we left off. At no time did you ever discuss with Judge Nixon passing the case to the file, am I right?

A. No, I didn't discuss with him passing it.

Q. You never discussed it with Bud Holmes, either?

A. No, I didn't.

Q. Okay. The only thing you said about passing it to the files that you knew is one day Carroll came in with the order that you looked at before, which was passing it to the files, around Christmas of 82, right?

A. Yeah.

Q. You brought that over, made sure, you arranged for Drew's wife to see it, made them a copy so that Drew, who you weren't really on speaking terms with, could see it as well, right?

A. That's right.

Q. Porter was around at the time, he was still alive, and did you talk to him?

A. No.

Q. So whatever you learned about, whatever you learned about what that meant, you would have learned it from Drew? No, because you weren't talking to Drew, right?

A. Carroll Ingram brought it.

Q. I know he brought it. Carroll didn't tell you this meant the case was over and done with, did he? He just brought it to you.

A. I was under the distinct impression that it was over with.

Q. I understand. When you say that, what we need to do, did someone give you that impression? Did Carroll say that to you?

A. He said, I don't remember the words he said. When he brought it I thought that was the absolute end of it.

Q. That's what you thought, right?

A. Yes.

Q. What I'm asking you, did he say that to you or is that something you decided in your mind?

A. He said something that made me think that, yes.

Q. When you -- a week later you read in the paper the direct opposite of that, you told us you read it, right?

A. Yeah.

Q. Did you call Carroll up, attorney you relied on you told us, what are you talking about? As far as I read in the paper, they can pull this out at any they want? You never called him up, did you?

A. I called Wallace Gunn.

Q. Wallace Gunn?

A. Yeah.

Q. Not what you would call a criminal attorney, right?

A. That's right.

Q. Oil and gas lawyer?

A. Yes.

Q. What did Wallace say to you?

A. Said get Karl Kepper, he's a criminal --

Q. Wait a minute. To be sure, are you sure you talked to him in 19 -- when it was passed to the files he suggested you get Karl Kepper?

A. No, when it was brought, when it was brought back out, and when Bud Holmes called Drew and wanted him in come down there and carry out the agreement Bud said he had with Bill Porter.

Q. I just want to show you what you just did. I was asking you about an event in January of 1983, that's when the publicity comes out about it being passed to the files, okay?

A. Yeah.

Q. You just from that, you jumped to saying what you said, you called Gunn who told you to get Karl Kepper, right? Am I right?

A. Yeah.

Q. Okay. Kepper is a criminal attorney, right?

A. Yes.

Q. Isn't it a fact that conversation took place a year later after Porter was dead and the question --

A. That's what I meant, after --

Q. You see what you just did?

A. I'm confused, but it was when, it was when it was -- the night before Bud Holmes and Dickey McKenzie come out to the office.

Q. That's December 1983. We know that, right?

A. Yeah.

Q. So you just jumped a year and took a conversation which had happened a year later, from the witness stand, accidentally, put it a year earlier, do you understand that you just did that?

A. I don't remember them dates. I don't remember them dates.

Q. I understand that. Okay. One way, as I understand it, you had tried to figure out when this incident, this telephone call, this meeting with the judge happened and the telephone call you got that night, okay, and you've been asked by the prosecutors any number of times to try to date it, right?

A. Yes.

Q. And I take it your recollection, your ability to deal with dates was no better when you were talking to them than it is now, right?

A. Well, I know it hadn't been passed to the file when I talked to Judge Nixon.

Q. You know that you say because you said that the incident happened and shortly after it it was passed to the files, that's what you told the grand jury, right?

A. Yeah.

Q. Also what you told us yesterday, right? Am I right?

A. Well, it was after I talked to him it was passed to the file.

Q. That's what you told us yesterday, right? Today when I showed you these documents, as I understand it, it was your recollection those, bringing it back from the file is what triggered your meeting with Judge Nixon, okay?

A. Well, I didn't mean that, no.

Q. That's what you said?

A. Well, I was confused, that wasn't what I meant.

Q. Okay. Well, as I understand it, I've read your grand jury fairly carefully, the number of times you've testified, the way you dated this incident is by the Royals visit to you, right?

A. Yeah.

Q. Everything you remember, the way you anchored this in your mind, the date of the visit with the judge, is it came right after the Royals visit to you, right? Do you want to see your grand jury testimony?

A. Yeah.

Q. You do?

A. No.

Q. I can show you at least ten places where you always said it was the Royals visit, is that correct, you were able to date this from the Royals visit, right?

A. Yeah.

Q. We've talked a lot about the Royals visit here today, haven't we?

A. Yes.

Q. Looks like it was in 1981, right?

MR. WEINGARTEN: We object, ask can we approach the bench.

MR. FAWER: Your Honor, what's the objection?

MR. WEINGARTEN: I'd like to approach the bench.

(AT THE BENCH:)

MR. WEINGARTEN: We have provided defense with -- Royals also visited Joe Crone in prison in 1982.

MR. FAWER: Let me tell you something, Reid. You ought to find out the facts. I've spoken to Royals five times. You haven't talked to him. Let me tell you --

MR. WEINGARTEN: We've given you the records.

MR. FAWER: And the records, I'm telling you when he visited and when he didn't. The records shows visits in August and September, excuse me.

MR. WEINGARTEN: And May 4th.

MR. FAWER: But that was not what this is about. So you take care of your case, I'll take care of mine.

MR. WEINGARTEN: If you're going to examine him --

MR. FAWER: You can put it on, I will take care of my examination.

MR. WEINGARTEN: Ask fair questions.

MR. FAWER: I have always been fair. I've never been accused of not being fair, but I will accuse you of not preparing your case, never having to this day of never interviewing Royals.

MR. WEINGARTEN: I don't have to listen to this.

THE COURT: Knock it off.

MR. FAWER: I'm finished.

(Open court:)

BY MR. FAWER:

Q. Mr. Fairchild, come back to this Royals visit. We recognize that you have, that your memory is not one that, where you fix on dates, you mix up dates very often, correct?

A. I don't remember dates very well.

Q. That's what I mean. As I was saying, you try, your mind had figured that the Royals visit is what triggered, you use that as the event before which the conversation with the judge took place, right?

A. Yes.

Q. Okay. Well, if the case -- we do know some event, we know the case was passed to the files December 23, 1982, okay?

A. Yeah.

Q. Okay. You got it, you got the order a day or so later. How long, if you say the judge talked to you, or you talked to the judge at your office just before or before this was passed to the files, which is what you're saying, how long before that?

A. I don't remember how long.

Q. A week?

A. I don't remember how long.

Q. I understand. Can you give us some approximation? Wasn't six months, was it?

A. No.

Q. A month?

A. Probably.

Q. All right. I want you as you sit there, I realize you can only do your human best, a month -- are you giving me the outside limits?

A. No, I don't remember how long it was.

Q. Let's double it, okay?

A. I don't remember how long it was.

Q. Well, you do think in your mind, you have it set that the thing that happened is the judge, you talked to the judge, the judge talks to Bud Holmes, passed to the files? That's what you told us before I showed you these things, right?

A. Yeah, I talked to the judge about it, and then later it was passed to the files. I don't remember how long.

Q. From what I've heard you say to the grand jury, or read, that that was the next thing that happened in the case. I mean that's why you figured that what had happened as a result of the visit of the judge was passing it to the files, right?

A. That's, me talking to the judge, next thing I remember when

Carroll come out there and give me a copy.

Q. When I asked you to give approximately how much time?

A. I don't remember.

Q. I know you don't. But I need to ask you, I don't want to keep asking you, I need you to try to help me, probably not a week, but a month?

A. I don't remember how long.

Q. But not six months?

A. I don't remember how long.

Q. Anything we can, any question I could ask you to help you on that?

A. No.

Q. You mean it could have been six months?

A. I don't remember.

Q. Crone was no longer in prison in July of 1982. Did you know that?

A. I didn't know when he got out.

Q. Did you talk to the judge close the December?

A. I don't remember when it was.

Q. You don't really have much of a recollection of these events, do you, in terms of when things happened?

A. I remember very distinctive the important things that happened.

Q. You remember the event, but you don't remember the sequence of events?

A. I remember me talking to the judge.

Q. Nobody is denying that. Nobody is suggesting you didn't?

A. And then that night getting a phone call.

Q. Nobody says you're wrong. We all agree with you. But you don't know when that happened?

A. I know it happened before the thing was passed to the file.

Q. Even though this is the only publicity that came at the time, right?

A. There was publicity all the time. Come up and get postponed or something, there was publicity all the time.

Q. I see. Well, then let's move on. Let's go back to one other thing of interest to touch on. In February -- I didn't ask you something. In February of 81 when these deeds were signed -- Remember that?

A. Yeah.

Q. You follow us? -- that at that time your son already had his memo of understanding, that was out of the way, he hadn't yet been indicted in the state court, you were completely unconcerned in February of 81 about Drew's case. Correct?

A. Yes.

Q. Okay. And so that at that time you weren't worried about his case, you had never met Judge Nixon, talked about anything with him at that time, correct?

A. Correct.

Q. And you had no thought in your mind in February of 81 of even needing any help or anything with Drew, it was all over with, he had made his deal with George Phillips, right?

A. Yeah.

Q. Why did you plead guilty? What did you plead guilty to? Can you tell this jury?

A. I pled guilty because my attorneys advised me and I felt like that I was guilty.

Q. Of what?

A. Giving a gratuity.

Q. You didn't intend any wrongdoing. You've said that on the record a hundred times, right?

A. I had no idea that I was committing a crime, absolutely.

Q. Did some attorney tell you you had committed a crime?

A. Yes.

Q. Without having any intent to commit a crime, some attorney told you you had committed one?

A. Yes.

Q. And you are now a felon because of that?

A. Yes.

Q. Did these people here tell you you'd committed a crime, Reid Weingarten?

A. No.

Q. They hadn't?

MR. WEINGARTEN: I respectfully object.

MR. FAWER: On what basis?

MR. WEINGARTEN: What's the point of this.

BY MR. FAWER:

Q. Did anyone from the government suggest you had committed a crime?

MR. WEINGARTEN: Your Honor, the man was indicted, speaks for itself.

MR. FAWER: Bull. I didn't know that an indictment meant he was guilty. I thought we have --

MR. WEINGARTEN: He was accused of a crime.

THE COURT: Gentlemen, let's move along.

BY MR. FAWER:

Q. You had no intent, as you sit here now, you had no more intent to violate the law than you had in 1981. Am I correct?

A. I didn't have no intent in violating the law.

Q. By the way, couple of things I just want to clear up with you. Let me show you Defendant's Exhibit 19, the promissory notes which, I don't know, had you ever seen the notes Judge Nixon has signed?

A. Oh, after this investigation got started.

Q. Okay. But obviously the investigation, you got the payments on the notes long before that, right?

A. Oh, yeah.

Q. These are all the checks with respect to them?

A. Yeah.

Q. This, you returned these notes to Judge Nixon when they were paid in full, long before this investigation. Right?

A. I don't remember them dates. Billy Riley done that. He didn't consult me over something like that.

Q. See whose name is on it? Jarvis'.

A. Well, Jarvis then.

Q. It would be just from the normal practice, the note gets paid off, it gets sent back to the person who signed the note?

A. Yes.

Q. That's what happened in this case?

A. Yes.

Q. Three notes signed paid in full, March, excuse me. September 16, 1982, March 7, 83, March 7, 83?

A. Yes.

Q. Correct?

A. Yes.

Q. Sent the notes back because you shouldn't have the notes after they've been paid in full, correct?

A. Correct.

Q. In fact, later on, after the investigation, you realized, did you not, that you had not calculated the interest that was due on the notes properly, and so you sent a bill to Judge Nixon for the additional money. Right?

A. My accountant did.

Q. Your accountant did?

A. Riley.

Q. Riley did?

A. Yeah.

Q. Okay. And let me show you. That was after, in fact it was after you went to the grand jury. Right?

A. I'm almost positive, yeah.

Q. And let me show you Defendant's Exhibit 23. This would have been the letter from Riley -- Is that your accountant?

A. Yes.

Q. -- to the judge asking for some additional monies, right?

A. Yes.

Q. He apparently made a miscalculation even in asking for the money, and the judge in Defendant's Exhibit 24 sent back the check, explaining what the right amount should be, which was instead of 1149, should have been 951.10, and that's the check he sent to you?

A. Right.

Q. It would have been deposited in your account?

A. Yes.

Q. That's Defendant's 24. One other thing I wanted to ask you about that, one other thing. You indicated to me -- oh, I left out a question. That was interest from 1980, right, I mean it picked up the interest as it should have been from February of 1980, right?

A. I think so. I didn't --

Q. The interest, the amounts due on the interest, those were told to the judge or the judge's secretary, are you aware of that, by Jarvis talking to the secretary for the judge, right?

A. Well, he was one obviously that was handling it.

Q. Fine. And you've told us that at one point I think just before you went to the grand jury you had your administrative assistant prepare a document calculating what your profit margin was on each of the wells that you had sold, the interest that you had assigned to Judge Nixon, right?

A. I asked to get it up, yeah.

Q. This is what she gave you?

A. Yes.

Q. And they are accurate as far as you know, those calculations?

A. As far as I know.

MR. FAWER: May I read that to the jury, Your Honor? May I read this document to the jury?

MR. WEINGARTEN: No objection.

THE COURT: Very well.

BY MR. FAWER:

Q. Ladies and gentlemen, on the stationery of W. R. Fairchild, to whom it may concern, dated July 16, 1984. The following figures are based on original costs of the mineral interest in the following three wells in which Judge Walter L. Nixon brought an interest: Wilkie gas unit, Mobile County, Alabama. Bought three overriding royalty acres, 1.8 per cent or 1/55th of what W. R. Fairchild owns. Profit margin of 23.43 times cost of acreage, or 2,343 per cent profit on that well, made by you, on the sale to the judge, right?

A. Yeah.

Q. L. D. Ross well, Covington County, bought five overriding royalty acres, 1.4 per cent for 1/71st of what Fairchild Windham owns -- let me, Fairchild Windham owned the interest in the Ross?

A. Yes.

Q. Profit margin of 13.29 times cost of acreage, or 1,329 per cent profit. The third well, Rogers 28-11 well, Marion County, Mississippi. Bought 3 overriding royalty acres, 4.46 per cent, or 1/22nd of what W. R. Fairchild Construction Company owned. Profits margin of 83.13 times cost of acreage 8,313 per cent profit. Respectfully, Lynn S. Jones, administrative assistant, oil division, signed off by Billy Riley, controller.

BY MR. FAWER:

Q. As I understand it, you had this visit we briefly described or briefly discussed, the one in which Bud Holmes just before going out of office came to your office early one morning with Dickey McKenzie, right?

A. Yes.

Q. You basically told us about it, Drew didn't have an attorney at the time, right, Porter had died?

A. Yeah.

Q. And it was, it was right after, right in that period of time that you spoke to Gunn, he suggested hiring another attorney, Karl Kepper, right?

A. Yeah.

Q. And the case, Bud Holmes leaves office the end of that month, right?

A. (Nods yes.)

Q. The sentencing has not yet occurred, right?

A. I don't remember -- that's right.

Q. We move down to 1984, right?

A. Right.

Q. We did forget one thing. Apparently back in the spring of 83 you and Jarvis had a falling out, and you asked him to leave, right?

A. Yeah.

Q. And he went to work for a law firm in that fall having graduated law school, you paid for, and he went to work for a man who basically was your enemy, right?

A. Yes.

Q. Zachary?

A. Yeah.

Q. And you did not know -- did you know anything about Jarvis talking to the FBI at that time?

A. No.

Q. And had you ever made any attempt on his life to fix the brakes to malfunction or anything like that?

A. Absolutely no.

Q. Have you ever done, sought to do violence to anybody in your life?

A. No.

Q. In any event, something happened I take it in the early part of 1984, in the first, third month or so, in which, it angers you enough to ask an associate of yours to go to George? Is that right?

A. To go to what?

A. I'm talking about sending John Baltar to see George Phillips.

Q. Yeah?

A. Yeah.

Q. That's much more recent. Early April of 1984. What is it that upset you that you called John Baltar, I think he was up in Jackson at the time, am I right?

A. Yeah.

Q. So we understand, John Baltar works for you?

A. Yeah.

Q. I don't know, I saw him here earlier, not sure I see him here today. In any event, John acts as a lobbiest at the capitol for you, right?

A. Yes.

Q. He was in Jackson, something angered you and you called him, right?

A. Yeah.

Q. Do you recall what that was?

A. I think it was Bob Royals come back there was looking for more money or something.

Q. Royals again in March of 1984?

A. Well, it was, yeah, I think it was. But it's something that angered me.

Q. Okay. You don't remember what it was?

A. No.

Q. But whatever it was, you angrily told John Baltar that Bud Holmes was blackmailing you?

A. In my opinion.

Q. In your opinion?

A. Trying, yeah.

Q. Once again, Holmes and Ingram were blackmailing you, right?

A. Yeah.

Q. Now Holmes wasn't even DA at the time, right?

A. I don't remember them dates.

Q. Take my word for it. He left office midnight, December 31, 1983. Took off his badge, became private citizen Bud Holmes?

A. Yeah.

Q. Now we're four months later, three and a half months later, early April, 84, you're telling Baltar that you're angry, you want to go to the press in fact, right? Am I correct?

A. I don't remember when it was, but I threatened to go to the press. I think it's right at the time Bud went out of office.

Q. Okay. That's at the time that Bud and McKenzie come visit you?

A. Yeah.

Q. But now we are three months later. Time's passed?

A. Yes.

Q. And one thing you do know, you did send John Baltar complain, to make a complaint to George Phillips in Jackson?

Q. Right?

A. Yes.

Q. And I assume he made the complaint you wanted him to make?

A. Yes.

Q. And it was that Holmes and Ingram were blackmailing you or you believed that?

A. Yeah.

Q. Why? What is it that, how were they blackmailing you?

A. Well, it's -- There was something happened at that time that caused me, and we working three or four hundred people down in Florida and we got a press plant at Arkansas one one in Shreveport and we got this business all around and I just -- I don't keep them notes. I just don't remember when somebody handles it. That's what John Baltar is for. I give him a problem and I forget about it.

Q. One thing you did say that you remember is that when something important happens, like you being blackmailed, you remember those things. Now you're accusing someone who's not even in office of blackmail, Bud Holmes. Right?

A. Yeah.

Q. What has he got to do with anything that you're interested in at that point?

A. Well, it was, it was -- Well, it was something. That's one of them things that I don't remember.

Q. Okay. The trial of Watkins had not come up, right, before or after? Watkins is still a fugitive. Right?

A. Yeah.

Q. To this minute he's still a fugitive. Right?

A. As far as I know.

Q. Okay. So the sentencing of your son hasn't come up. Right?

A. That's right.

Q. Okay. But something happened that you cause one of your employees or associates to go talk to the U. S. Attorney and accuse a former district attorney and a prominent attorney in Hattiesburg of blackmail. Right?

A. Yeah, I asked him to go.

Q. You had no idea that at the same time Jarvis had been talking to the FBI correct?

A. No, I didn't know he'd been to them.

Q. But almost immediately you're paid a visit by some FBI agents. Right?

A. Yes.

Q. And Ken Whitespunner I think was his name. Right?

A. Yeah.

Q. And talks to you a couple of times. Right?

A. Yes.

Q. Next thing you know, you get a call from a man you hadn't spoken to in some time, Ken -- excuse me, Skip Jarvis. Right?

A. Yes.

Q. Skip tells you he's gotten a call, the FBI wants to talk to him?

A. Yes.

Q. They want to talk to him because it concerns something about the deeds, the sale of those mineral interests to Judge Nixon. Right?

A. Yeah.

Q. And he comes to your office and comes in and you talk privately to him. Right?

A. Yes.

Q. Okay. Now Skip was not someone that you liked at the time. Right?

A. Right.

Q. But at the same time you knew that what he was telling you about some FBI investigation, that was true because you had started that investigation?

A. Yes.

Q. You didn't know that he was involved as well from a different angle, but you knew that he was telling you the truth and that you could understand why the FBI would come to him. Right?

A. Yes.

Q. Okay. And he starts questioning you about the events back in 1981 concerning these deeds. Right?

A. Yeah.

Q. And you are telling him, and correct me if I'm wrong, we all -- We don't need to, we had the tape of that whole conversation. Okay?

A. Yeah.

Q. You have seen the transcript of it earlier today. Right?

A. Yeah.

Q. We could play it again but I think that would just take a lot of time, so I'm just going to ask you some things about it. Every time there was any suggestion -- Well, is it not true that Jarvis tried to suggest to you that there was something to cover up, something to hide about the transaction back in 1981. Right?

A. Yes.

Q. And every time he said it, you told him there was nothing to it it was perfectly legal. Right?

A. I told Jarvis what I wanted him to hear.

Q. Well, have you told us anything different? Was the deal perfectly legal?

A. Well, I thought it was at the time.

Q. You just told us, not ten minutes ago that you never had any intent to commit a crime back in February of 81. Right?

A. (No response.)

Q. Did you just say that?

A. Yes.

Q. That's precise and you're telling the truth now. Right?

A. Yes.

Q. You told the same thing to Jarvis. Right?

A. Yes.

Q. You have no problem with that, do you?

A. I told him what he wanted to hear.

Q. But you also told him the -- What he wanted to hear? He was looking to stick it to you, you know that, don't you?

A. Well, I know it now.

Q. You were telling him precisely what the truth was, that the deal was perfectly legitimate. Didn't you tell him that?

A. Yeah.

Q. And you have told us the same thing. Right?

A. No, I hadn't said that. I said that I didn't have any intent --

Q. If you --

A. -- to violate the law.

Q. You didn't have any intent to violate the law, you hadn't even met Judge Nixon so what was it that was violation of the law? Could you tell us?

A. Selling something undervalued.

Q. Undervalued?

A. Yeah.

Q. That's a crime. Who told you that's a crime?

A. My attorneys.

Q. You might want to think about going to the bar association. In any event, you have told us that and you told Jarvis that the value you placed on it was the proper value at the time the verbal deal was agreed to with Carroll Ingram. Right?

A. I told Jarvis that.

Q. And you told us that earlier today?

A. Yeah.

Q. You told the truth earlier today, didn't you?

A. Well, a, at the time it was first mentioned.

Q. That's right. The value was, in your judgment, 95 hundred, it may have been more in February of 81, but the time that the deal was made, that was a fair market value. Right?

A. Well, when the deeds was consummated it was worth 26 or $28,000.

Q. I understand that. But the deal had been cut, the verbal deal had been made a year before that. Correct?

A. I don't think it was that long before.

Q. When was it cut?

A. You would have to ask Carroll. I don't remember.

Q. We most certainly will.

(Laughter.)

You have no recollection of when it was done?

A. Well, it was cut before the deeds was made out.

Q. Okay. But what you're telling us is Carroll, we do know that the value placed, the value, 95 hundred was the value placed on it when the deal was cut, even though you don't remember when that date was and we need to talk to Carroll to find that out. Right?

A. Yeah.

Q. Okay. But one thing, one other thing that you said again and again, and you told us today the same thing, you told to Jarvis that that oil and gas deal, in your words, didn't have a damn thing to do with Drew Fairchild. Correct?

A. Yes.

Q. And that's true today, it was true when you talked to Jarvis and it was true in February of 81. Correct?

A. Correct.

Q. You told him, as I recall, finally, on that issue, that when you were speaking to him, that your conscience was clear because you hadn't -- had no intent to violate the law, it was notes -- and there was no intent to commit a bribe or do anything in violation of the law, it was a perfectly legitimate deal when it was done back in 81. Correct?

A. I don't remember saying back in 81. I remember the words.

Q. What words?

A. What you just repeated.

Q. You didn't use any --

A. What you used. I didn't have any intent in violating the law.

Q. And back in 1981, when the documents were drawn up, --

A. Whenever they were drawn up.

Q. We know the date is, February 25, 81.

A. Yeah.

Q. Okay.

MR. FAWER: Bear with me for one moment.

(Pause.)

BY MR. FAWER:

Q. To save us some time, you then were asked to go to the Grand Jury in July of 1984. Right?

A. Yes.

Q. And you basically, when they questioned you, the whole focus of that inquiry was this oil and gas deal with Judge Nixon. Right?

A. Yes.

Q. You basically told them the same thing that you have told us and that you told Jarvis, there was no intent to commit a crime, it was a perfectly legitimate deal and it had nothing to do with Drew Fairchild. Correct?

A. Well, if that's in my testimony, that's what I said.

Q. It most assuredly is, but if you want to see it, I'll be happy to show it to you.

A. I don't need to see it.

Q. Nevertheless you got indicted for giving the Judge an illegal gratuity in September 1984. Right?

A. Yeah.

Q. And you're telling us that you had no intent to commit a crime. Right?

A. (Nods yes.)

Q. And which lawyer, who is this lawyer who told you to plead guilty?

MR. WEINGARTEN: I respectfully object to the relevancy, Your Honor.

MR. FAWER: Let's not embarrass anybody, you're right. I withdraw that question.

BY MR. FAWER:

Q. But somebody you paid money to, suggested you should plead guilty?

A. Yes.

MR. WEINGARTEN: I'm going to object to any conversation this man had with a lawyer.

MR. FAWER: He's told us that --

MR. WEINGARTEN: I'm objecting now.

MR. FAWER: I would object. He has no standing to deal with the attorney-client privilege. The attorney-client privilege belongs to the witness. May I ask the question?

THE COURT: Proceed.

MR. FAWER: Thank you.

BY MR. FAWER:

Q. Some lawyer suggested you should plead guilty. Right?

A. No, he just said I was guilty as hell.

Q. You were guilty as hell.

(Laughter.)

And was there discussion with anyone, your lawyer or any associates that if you pled and agreed to cooperate with the government against Judge Nixon that you could make a deal with the government?

A. Yeah.

Q. Okay. There's no question in your mind that the government was interested in bringing a case against Judge Nixon, was there, sir?

A. I knew what the, what the Grand Jury was empaneled for.

Q. Which was what?

MR. WEINGARTEN: Excuse me, Your Honor. What Wiley Fairchild understood --

MR. FAWER: That's fine, I withdraw it.

BY MR. FAWER:

Q. You don't know because you're not on the Grand Jury, you're assuming that. Right?

A. Yes.

Q. What I'm asking you, let's put it another way. You knew, did you not, and your lawyers told you this or John -- Did you talk to John Baltar when you were doing this?

A. Yeah.

Q. Talked a lot to John?

A. Yes.

Q. Give the government something against the Judge and maybe you can make a deal. Right?

A. Well, I don't remember the very words, but my lawyers --

Q. I don't want to put words in your mouth.

A. I don't remember the words. My lawyer went in there and talked, Mr. Mr. Reid Weingarten --

Q. I understand this is this is very painful, am I right, to discuss all of these events?

A. Yes.

Q. Is it fair to say you were of an understanding that if you could give them information that would help them against Judge Nixon, that you could make a deal with the government? Was that your understanding?

A. Yes.

Q. You then turned around and you, with the help of your other people who were on your payroll and your lawyers, came up with everything that you could think of to tell the government about

Judge Nixon. Right?

A. I come up with the truth, what I believe to be the truth.

Q. Okay. Fine. Let's deal with what you believe to be the truth. That's the only thing we are going to deal with. The way this worked is the government said, before we will make a deal with you, -- Don't worry, we are going to be done in not too long, we are nearing the end. Okay? Just a little bit more. -- the government said to you or to your attorneys and they told you, we are not just going to buy a pig in a poke -- Do you know what a pig in a poke is?

A. Yes.

Q. We are not going to buy a pig in a poke. You're going to tell us what you know and we are going to look at it and, if we like it, we are going to make a deal. Right?

A. Yes.

Q. You were supposed to go to trial on December 3, 1984. Right?

A. Yeah.

Q. This is all going on in November of 1984. Right?

A. Yeah.

Q. I guess it's fair to say if there's one thing in this world you prefer not doing, is being in a courtroom. Right?

A. That's right.

Q. It's sort of ironic, sir, that after it was all said and done, you had to end up just where you didn't want to end up.

Right?

A. Yes.

Q. November of 1984 and where do you go, up to Jackson to talk to the government about a possible deal?

A. Yes.

Q. And you make what they call, let me see if I can find this, I think it was in writing, here it is, and you have a little conversation on November 1 of 1984 at the FBI office in Jackson, Mississippi. Right?

A. Yeah.

Q. And the names are on here, it's not surprising, Mr. Weingarten is sitting there questioning you. Right?

A. Yeah.

Q. He was the prosecutor in your case. Right?

A. Yes.

Q. He's the one you understood wanted to make a case against the Judge. Right?

A. Yes.

Q. Okay. And you then go in and you tell him what you know. Right?

A. Yes.

Q. And, by the way, he doesn't begin, in all fairness by suggesting anything to you, you just, he just tells you, simply makes a statement that you're present, there, the counsel is there and why everybody is here at this meeting and then you go on and he says, this is simply the opening salvo in potential plea negotiations. Right?

A. Yes.

Q. Let me give you a copy of this so you can follow along in case you have any problem in recalling the events.

MR. FAWER: I presume the government has a copy.

MR. WEINGARTEN: Yes.

BY MR. FAWER:

Q. Have you seen that before?

A. Yes.

Q. And I take it before you went there, you and your attorney, who was with you there, right?

A. Yeah.

Q. Not only your attorney, Wallace Gunn was with you. Right?

A. Yeah.

Q. And the gentleman in the back row, John Baltar, was with you as well. Right?

A. Yeah.

Q. Okay. And you had talked over with the two of them what it is you were going to say to the government on this occasion. Right?

A. Yeah.

Q. What it was that you knew that you could tell them to maybe work out a plea agreement. Right?

A. Yeah.

Q. Okay. You didn't start off, as I understand, talking at all about this case. Nothing about the oil and gas transactions, nothing at all about that. You talked about a friend of yours named Preacher Shows from Seminary in Mississippi. Right?

A. Yeah.

Q. And you told the government that this man, Preacher Shows, his real name is Tom, right?

A. Yeah.

Q. He's a preacher but I mean he's known as Preacher but he's Tom Shows?

A. Yeah.

Q. An old friend of yours from childhood, right?

A. Yeah.

Q. He had a son named Dr. Billy Ray Shows. Right?

A. Yeah.

Q. Billy Ray had gotten in trouble and had been tried for prescribing without a license or controlled substances or something like that? What was it?

A. Controlled substances.

Q. And he had been convicted, right?

A. Yeah.

Q. He had been indicted and tried, is that right? And that he was unhappy with his lawyer?

A. Yeah.

Q. Am I accurate about what he told you?

A. That's what he told me.

Q. This is what Shows told you that's what you said?

A. Yes.

Q. He came to you, his son had been convicted, how long a sentence?

A. I think it was six, well, when he come to me, he hadn't been sentenced.

Q. Are you sure about that?

A. No, I'm not sure.

Q. Let me see if I can refresh your recollection. He had already been sentenced but they wanted to get a reduction in sentence?

A. Maybe so.

Q. You have the document in front of you. You might want to refresh your recollection. And that you said that Preacher Shows told you, came to you with Billy, with Dr. Billy?

A. Huh?

Q. Did he come to you with Billy Ray?

A. Well, he come by hisself sometimes, with Billy Ray sometimes.

Q. And you said that Preacher Shows told you, you were asked, or were you asked, who is the judge. Right?

A. (Looking at document.)

Q. Try the first page, your first answer, see where it says

Judge Nixon was the Judge.

A. Yeah, well that's all my information come from Preacher Shows.

Q. I understand. And you told the government that he wanted to know if you knew anybody in Washington or anybody who could help and you said no, but you heard that Holmes and the judge were friendly and you sent him to Bud Holmes?

A. Yes.

Q. And that they went to Bud --

MR. WEINGARTEN: Excuse me. May we approach --

MR. FAWER: Sure. (AT THE BENCH:)

MR. FAWER: Your Honor, --

MR. WEINGARTEN: I asked you to keep your voice down.

MR. FAWER: They allowed this man to go on record of accusing Judge Nixon of doing a fix in a case he wasn't even the judge in. They then brought this out in Grand Jury --

MR. WEINGARTEN: And cleared it up.

MR. FAWER: Excuse me. You never did. You never brought out the name of the judge.

MR. WEINGARTEN: I certainly did.

MR. FAWER: Fine. You bring it out on redirect, this man lied to them and accused Judge Nixon of having fixed that case. Judge Nixon had nothing to do with the case, it was Judge Russell, there was no fix, there was no reduction, it was just a lot of nonsense. He was trying to sell information to the government. I have a right to go into that. If you want to go into that --

MR. WEINGARTEN: This is impeachment on a collateral matter. This information was false, it was cleared up by the government. If there's an allegation of misconduct on the part of the Grand Jury, that's for you, not the jury.

MR. FAWER: It's not collateral impeachment. It's to show his bias and why he's lying to you.

MR. WEINGARTEN: Ask him if the proffer was correct.

MR. FAWER: I'll ask him. I don't need help from you.

MR. WEINGARTEN: The simple truth of this is Wiley Fairchild gave information in the proffer that was incorrect.

THE COURT: I'm going to let in anything that goes to credibility.

MR. FAWER: Thank you.

THE COURT: Overruled.

MR. FAWER: Thank you. (IN OPEN COURT:)

BY MR. FAWER:

Q. And picking up, you sent him to Bud Holmes because, from what you understood, he was a friend of Judge Nixon's. Right?

A. Well, he's -- Yeah, he was the one that handled a lot of cases.

Q. Send him to Bud because you knew that, you said it, you heard Holmes and Nixon were friends. Right?

A. Yeah.

Q. That's why you sent Shows to Bud Holmes. Right?

A. Yeah.

Q. So we understand this all was supposed to have taken place in the late 70's. Right?

A. Yeah.

Q. Several years before, before Bud was even DA. Am I right?

A. Yeah.

Q. He was a private attorney at the time?

A. Yes.

Q. In any event you went on with your story and from what I understand you have alleged to have happened is that Bud got $10,000 and was able to get the sentence reduced. Correct?

A. Yeah.

Q. And he shared that money with Judge Nixon. Am I right?

A. I didn't say that.

Q. Let us look at what you said here. Hold on just one second. Bear with me. Do you recall saying that the reason that you put Nixon in the deal, the mineral deal, you told the government, is that based on what you understood happened in the Shows case, that you could deal with Nixon?

A. Yeah, I told them that.

Q. You told them that. Right?

A. Yes.

Q. And so you put in the government's head that that was the basis for why you had dealt in the oil and gas transaction with Judge Nixon. Right?

A. Repeat the question.

Q. You told the government in your proffer, and again in the grand jury under oath, that the reason that you had gone through with this oil and gas deal is because you felt, based on the Shows incident, that Nixon was a judge, putting it simply, who could be bought?

A. Could what?

Q. Be bought. You could deal with him?

A. Well, I didn't mean that -- put him in because that, if he could do me a favor I figured he would.

Q. Did you accuse the judge of getting a part of the --

A. No.

Q. Did you say that Preacher Shows told you that?

A. No, I don't remember Preacher Shows telling me that.

Q. Did you suggest that was the reason that you got into the deal with Judge Nixon?

A. There on Page 2 is what --

Q. Let me read you some of your testimony in the grand jury, see if it refreshes your recollection.

"Now did this incident with Dr. Shows take place before you transferred the assignments to Judge Nixon?

"Answer: Yes, some two or three years before.

"Okay, did that incident influence you at all in your dealings with Judge Nixon?

"Well, yeah, yeah.

"Question: Why?

"Well, in my terminology you could quote deal close quote with Judge Nixon. If you got in trouble he would help you.

"Question: How could you quote deal with him?

"Answer: By you, well just like Bud got him to reduce that sentence.

"Question: Do you have knowledge as to whether or not Bud shared the ten thousand dollars that he received from Preacher Shows with Judge Nixon?

"No, no. I don't know.

"Question," by Mr. Reid Weingarten, "Do you have an assumption, though?

"Answer: Well, I would assume, yes." That's your testimony under oath in the grand jury after you entered into your plea agreement. Do you recall it?

A. Yes.

Q. Has Reid Weingarten ever told you that you were totally wrong in who was the judge in the Shows case?

A. Yes. I was -- Preacher Shows, he told me about going over to Bud's house, see the picture of the judge --

Q. Sir, I asked you a question.

A. Okay.

Q. As you sit on this stand, did anyone ever tell you that Judge Nixon never had anything to do with the Billy Ray Shows case?

A. Mr. Weingarten did.

Q. After the grand jury, after he put you in the grand jury to testify about it or before?

A. After.

Q. Okay. He let the grand jury hear all that, right, what I just read to you?

A. Yeah.

Q. Thank you. And you know now I take it as well that there never was a reduction of sentence in that case, don't you?

A. Preacher Shows told me there were.

Q. So, I take it we could ask Preacher Shows, you're saying Shows told you the wrong judge, and told you a result that never happened?

A. He told me instead of getting eighteen months sentence he got a six months sentence.

MR. FAWER: Bear with me one moment, Your Honor.

(Pause.)

MR. FAWER: I would offer at this time as an exhibit certified record of this court, the docket sheet of United States v. Billy Ray Shows. Would the government like to enter into the stipulation?

MR. WEINGARTEN: Yes.

MR. FAWER: The judge in the case was Judge Dan Russell. There never was a reduction of sentence, 18 month sentence, motion made by Bud Holmes to reduce, which was denied, am I correct?

MR. WEINGARTEN: We will stipulate to the authenticity.

MR. FAWER: Do you agree or should I read.

MR. WEINGARTEN: I just stipulated to the document you offered.

BY MR. FAWER:

Q. In any event, coming back to your situation in November of 1984, sir, is it fair to say that you were in a situation where there was virtually no limits to which you wouldn't go to avoid going to trial?

A. I didn't want to go to trial.

Q. You would do anything to avoid it, right?

A. No.

Q. There was some limits, hey?

A. Yeah.

Q. Try to put the best date you could on everything, right? Try to come up with the best dates you could?

A. Oh, dates on what?

Q. On anything the government asked you?

A. I told you, I don't remember them dates.

Q. Okay. Thought the government might want to hear there was something wrong with the oil and gas transaction, you and your attorneys and your associates came up with something wrong with the oil and gas transaction?

A. Repeat the question.

Q. You thought the government would like to think, or like to hear that there was something wrong in your dealings with Judge Nixon, so you told them that?

A. Well, my opinions were something wrong, sold them too cheap.

Q. I see. Anybody ever indicted, did you ever sell anything too cheap in your life?

A. Yes.

Q. Did you plead guilty to any federal crimes for it?

A. No.

Q. Let's come back to November of 84. You had to figure out a way to avoid a lengthy jail sentence, what you thought was. More importantly to avoid sitting on a witness stand, sitting as a defendant in a trial, right?

A. The big factor that motivated me that my attorney said they thought I would be convicted, and I would serve time. If I was found guilty they would walk over and put the handcuffs on me and carry me to jail, and the sentence would be two years and I'd have to serve eighteen months. By that time, it would take that long to get an appeal.

Q. So the only alternative was to make a deal?

A. Well, that's one of the reasons I made the deal.

Q. And part of the deal is what you said about Preacher Shows and that whole case, the first thing you told them?

A. The reason I made a deal, I thought, I thought I was guilty then, and I think I'm guilty now.

Q. Of what? Of what, selling too cheap?

A. Yes.

Q. Aside from selling something that you now think you sold too cheap, even though your profit was a thousand per cent on each one of them, even though you have said on any number of occasions you thought it was a fair price when you made the verbal arrangements, aside from selling it too cheap, what's your crime?

A. Just what I've said, selling it too cheap.

Q. Selling too cheap?

A. At that time it was valued way more than that.

Q. At what time?

A. Well, the time that the deal was consumated.

Q. But that was long after the verbal agreement, right?

A. Well, we had this, I told him what wells I was going to put him in, I knew at the time by signing the deeds it was way too cheap, I wasn't concerned. I didn't know it was against the law to sell a public official something too cheap.

Q. Then you went to the grand jury as I understand it, before you went you got an agreement from the government, right?

A. Yes.

Q. And the agreement was that if you plead guilty to selling too cheap, God help us, that they would recommend you don't do any jail time, right?

A. Yes.

Q. So you made that pact with them, right?

A. Yes.

Q. And they said all right, we'll dismiss the other count, go recommend this to the judge, right?

A. Yes.

Q. And you went to the grand jury, right?

A. Yes.

Q. And went in, they made sure that -- by the way, there was some days that passed between the day -- November 1st is the day on that proffer, is it not, November 1, 1984?

A. Yeah.

Q. You went to the grand jury on November 28th, didn't you?

A. Yes.

Q. 27 days passed. At no time did anybody tell you during that period of time that Judge Nixon had nothing to do with the Shows case, did they? They just let you testify to it under oath in the grand jury, didn't they?

A. Yeah.

Q. Did they let you tell stories about how you believed about how Bill Porter got killed in that plane crash?

A. I repeated the street talk.

Q. They brought it out from you, right?

A. Huh?

Q. They asked you about it, let you talk about the street talk about Bill Porter, correct?

A. Yeah.

Q. They never said to you that's beside the point here, they just let you go on about Bill Porter, you thinking there was some wrongdoing in Bill Porter getting killed in the Gulf of Mexico in a plane crash?

A. That was street talk.

Q. But you talked about it under oath in the grand jury, right?

A. Yeah, that's --

Q. And I take it you knew that the only thing, once you had made your deal, which was before you went to the grand jury -- by the way, could I have a copy of that plea agreement? Do you have it with you? Before you went to the grand jury and before you entered your plea agreement, did the government, in the person of Reid Weingarten, sent a letter to your attorney Barry Hess, am I right?

A. Sent a letter to Barry Hess?

Q. Barry was your attorney at the time, right?

A. Yes.

Q. Have you seen this letter?

A. Yeah.

MR. FAWER: Thank you. May I read it to the jury? Any objection?

MR. WEINGARTEN: No.

MR. FAWER: The letter from the department of, on the stationary of the Department of Justice, signed by Mr. Reid Weingarten. Barry Hess, attorney for Wiley Fairchild, dated November 20, 1984, which is three weeks after the proffer we just discussed. Dear Mr. Hess. As you know, your client, Wiley Fairchild, made a proffer to the United States in connection with plea negotiations on November 1, 1984. We have evaluated that proffer and we have concluded that Mr. Fairchild is making a good faith effort to cooperate with the government. If a plea agreement is reached between Mr. Fairchild and the United States consistent with the terms set in New Orleans and memorialized in a separate document attached hereto -- we'll come to that in a minute -- we would expect continuing cooperation from Mr. Fairchild, including complete and truthful testimony before the grand jury and at any and all trials taht may follow from this investigation. In the event that we conclude, and it would be solely our determination, that's in parentheses, that such cooperation has been and is forthcoming, we would recommend to the sentencing judge that a prison sentence is not warranted in this case. If we conclude cooperation from Mr. Fairchild is not complete in any manner, we would be free, of course, to modify our recommendations. I know you understand as well that the sentencing judge would not be obliged to follow our recommendations. Sincerely, Reid Weingarten.

The attached document is the plea agreement, am I right, Mr. Fairchild?

A. Yes.

Q. Basically, may I, Your Honor, it's Defendant's Exhibit 29. The plea agreement in that case, the defendant Wiley Fairchild would plead guilty to Count I of the indictment, gratuity, that was pleading guilty to selling too cheap, right?

A. Yes.

Q. United States will move to dismiss Count II of the indictment for perjury? You hadn't committed perjury, had you?

A. No.

Q. United States will make known to the sentencing court any and all cooperation which Wiley Fairchild provides. United States Attorney retains the right to allocute at sentencing. Wiley Fairchild will not be prosecuted by the United States for any offenses, the facts of which are known to the United States. Am I right? That's what they told you?

A. Yes.

Q. And then some time went by. Just bear with me, I'll be done in a minute, Your Honor. I'll be done in a minute.

(Pause.)

That all occurred in November of 1980. You went to the grand jury shortly after that, we've read from portions of your grand jury. You've testified about it?

A. Yes.

Q. Including the Shows incident, the Bill Porter death, things of that sort, right?

A. Yes.

Q. And your cooperation was then made known to Judge Carr as the government had promised, am I right?

A. Yes.

Q. And they recommended to Judge Carr that you not be given any jail time, right?

A. Right.

Q. You were there when Reid Weingarten stood up and made that plea on your behalf?

A. Yeah.

Q. Okay. It wasn't until September of 1985, if I recall, right?

A. Yes.

Q. That you were sentenced, right?

A. Right.

Q. One thing intervened though, didn't it. One thing germane here: The judge was indicted, right? Just before you were sentenced?

A. Yeah.

Q. And you were sentenced at that time to what, tell us again?

A. Two years, twenty-two months suspended.

Q. And the balance of the time?

A. In a halfway house at Jackson.

Q. We're talking about I think you told us you ended up spending 29 days?

A. 39 days I think it was.

Q. 39 days in the halfway house. What you mean by that you would go up there, commute to work every day, right?

A. Yes.

Q. You would be in Hattiesburg working, cheuffeur would drive you up there each day, correct?

A. Yes.

Q. And he would stay with you overnight at the halfway house?

A. That's right.

Q. And then he would bring you back the next day in time for work?

A. That's right.

Q. That lasted for one month and nine days?

A. No, it was over a period of two months.

Q. Certain days you didn't have to go up there?

A. That's right.

Q. On weekends would you be there or here?

A. No, I would get out on Friday. I didn't have to be back there until Sunday night. Holidays didn't, holidays didn't count.

Q. I see. You've now been on the stand for I guess since yesterday morning, am I right, sir?

A. Yesterday evening.

Q. Yesterday afternoon, I'm sorry?

A. Yes.

Q. I apologize to the extent I've had to keep you on the stand this long. I hope you understand why it happened?

A. I do.

Q. I trust I've been courteous with you; have I been?

A. I guess so.

(Laughter.)

Yeah, I'm satisfied.

MR. FAWER: I apologize to you for what the government has put you through. No further questions. I tender the witness.

REDIRECT EXAMINATION

BY MR. WEINGARTEN:

Q. Mr. Fairchild, let's talk about this Preacher Shows stuff a second. Where did you get your information about Preacher Shows?

A. Shows. Tom Shows, his father.

Q. Did you get your information in any way, shape or form from Judge Nixon about Preacher Shows?

A. No.

Q. Did you have any contact with Judge Nixon about Preacher Shows?

A. No.

Q. Did you ever indicate that you got your information from Judge Nixon about Preacher Shows?

A. No.

Q. Did you ever suggest that you had any inside knowledge about the Preacher Shows situation from Judge Nixon?

A. No.

Q. Or from anywhere else?

A. No.

Q. Did you ever represent that you had inside information about Preacher Shows, either to the United States or to the grand jury?

A. No.

Q. So what you were reporting is you were reporting information that you got from a friend?

MR. FAWER: Excuse me. I know I was on cross, maybe he forgets, but he's on direct. I would ask he not be permitted to lead the witness.

THE COURT: Proceed.

BY MR. WEINGARTEN:

Q. The source of your information about this alleged crime was from Preacher Shows?

MR. FAWER: I would object to the form of the question. I think it is still direct. I will stand up, with all due respect, and make the objection each time. It did not change the fact he's on redirect. It's still direct, done after I finished my cross. I would hope he has the experience to stay with his direct.

MR. WEINGARTEN: The Court has empowered me to proceed.

MR. FAWER: To proceed with the next question, not to run rampant over the --

THE COURT: Mr. Fawer, we're going to be here another three days if he goes about asking the questions in the normal way. In order to speed this process up, I want to get it done.

MR. FAWER: In the interest --

THE COURT: And therefore, I'm going to permit him to, if necessary, to ask leading questions.

MR. FAWER: On that basis, I withdraw the objection.

BY MR. WEINGARTEN:

Q. Would you read back the last question, please?

(Question read.)

A. From Preacher Shows.

Q. Did you ever suggest, hint or represent that the information came from Judge Nixon?

A. No.

Q. Did you ever hint or suggest or make any remark that would lead anyone to believe that you had inside information on this matter?

A. No.

MR. WEINGARTEN: What is the number of your exhibit, the proffer?

MR. FAWER: 26.

MR. WEINGARTEN: Is Defense Exhibit 26 in evidence?

MR. FAWER: No.

MR. WEINGARTEN: I move it into evidence.

MR. FAWER: Ask to approach the bench.

(At the bench:)

MR. FAWER: I strenuously object to that. He knows that that proffer could not be offered by him in direct, but I have a right to cross-examine based on it. It is not substantive evidence, but I can question him in an effort to impeach.

THE COURT: What is it?

MR. FAWER: It's the proffer. Show the Judge. In November of 1984. It's like offering his grand jury testimony.

MR. WEINGARTEN: I'm offering one half of it as a prior consistent statement. I certainly can do that.

MR. FAWER: What's the --

MR. WEINGARTEN: You impeached him on his testimony about the phone call.

MR. FAWER: I never touched on that. I never touched that.

THE COURT: Did you talk about that document to him?

MR. FAWER: Never once. I used that document solely to raise the Shows incident, and I'll be happy to introduce it, if they want --

MR. WEINGARTEN: I too.

MR. FAWER: On Shows.

MR. WEINGARTEN: No. No.

MR. FAWER: The rest of it is no -- you could not do that on direct. If that's the case, we're going to dump all of the after the fact statements in evidence. We're going to enjoy that. That is not the way the trial proceeds. The facts -- it's like I have a right if there is a document which there is an inconsistent statement or bears upon impeachment or intent or bias, I can use it. That's what I did. That doesn't give you a right to introduce the document.

THE COURT: I agree.

MR. WEINGARTEN: Excuse me. Half the document has to do with material that was impeachment, cross-examination material, I can move that in as evidence of a prior consistent statement.

MR. FAWER: I disagree. There's been no use of that document for that.

MR. WEINGARTEN: You don't need to use it.

MR. FAWER: Then you can do the same thing with the grand jury.

MR. WEINGARTEN: That's exactly right, as a prior consistent statement. Rule 801.

MR. FAWER: 801, the prior consistent, you should understand it, if there is a motive to fabricate. If you don't establish a prior motive for fabrication, that -- that's 801.

MR. WEINGARTEN: As long as it's in the in evidence.

THE COURT: Why don't you go ahead and question him about it without putting it in evidence.

MR. FAWER: Your Honor, I would want a full hearing before that is permitted.

THE COURT: I understand.

(Open court:)

BY MR. WEINGARTEN:

Q. Mr. Fairchild, you've been asked a great number of questions about the phone call from the farm to your house after the visit by Judge Nixon. Mr. Fawer asked you a great number of questions about the timing of that. I'm not going to ask you a great number of questions; I'm going to simply ask you, do your very best, as you sit here now, and tell the ladies and gentlemen of this jury whether or not the call from the farm was before or after your son's case was passed to the files?

A. It was before.

Q. Are you certain of that?

A. My conversation with him was before the case was passed to the file.

Q. Has the government forced you to say that?

A. No.

Q. Has the government put any pressure on you to --

A. No.

Q. -- to say that?

A. No.

Q. Has the government put the idea of the phone call into your head?

A. No.

Q. Mr. Fairchild, who got on the phone first, was it Bud Holmes, or was it Judge Nixon?

A. Judge Nixon.

Q. Has the government suggested to you that it was Judge Nixon that got on the phone first?

A. No.

Q. Has the government forced you to so testify?

A. No.

Q. Is it the truth, sir?

A. Yes.

Q. Is that why you're testifying to it?

A. Yes.

MR. WEINGARTEN: That's all I have.

MR. FAWER: Your Honor, I would move into evidence at this time Defense Exhibit 20, which is production records on the Wilkie well; 21, production records on the Rogers well; Defendant's Exhibit 24, which is the Nixon interest payment; Defense Exhibit 25, which is the document dated July 16th showing his profit ratio on the sale to Nixon of the wells; 27, which is the docket sheet on Billy Ray Shows' case; the letter to Barry Hess from Ried Weingarten, which is Defendant's 28; and the plea agreement itself, which is Defendant's Exhibit 29. I would move those documents.

THE COURT: Any objection.

MR. WEINGARTEN: Not an objection to any of them, Your Honor.

MR. FAWER: Thank you. No other questions.

THE COURT: May be received.

(Above Defendant's exhibits marked.)

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: You may be excused. Gentlemen, do you have a twenty-five minute witness?

MR. FAWER: I don't have a witness.

MR. WEINGARTEN: Sorry, not in twenty-five minutes.

THE COURT: What?

MR. WEINGARTEN: The next witness will be Bud Holmes. He certainly will not be a twenty-five minute witness.

THE COURT: Well, let's get him started.

PAUL HARDIN "BUD" HOLMES,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WEINGARTEN:

Q. Your name, sir?

A. Paul Hardin Bud Holmes.

Q. Spell your last name?

A. H-O-L-M-E-S.

Q. How old are you, sir?

A. 53.

Q. Where do you live?

A. In Forest County in the Barrenton community.

Q. What is the extent of your education?

A. High school. Southern with a bachelor of science and University of Mississippi Law School degree.

Q. When did you graduate from law school?

A. 1958.

Q. And, in general terms, what have you done as a lawyer since law school?

A. Just practiced general law and four years' service as district attorney.

Q. Have you specialized in any area of the law?

A. Just general practice.

Q. And when did you serve as district attorney?

A. 1980 to 1984.

Q. And where were you district attorney?

A. Forrest County, Hattiesburg, Mississippi and Perry County.

Q. And when you were district attorney, how big was your office?

A. I had two assistants.

Q. And what was your jurisdiction as DA?

A. You mean area wise or --

Q. You held office over.

A. I was over Forrest County and over Perry County and we handled felony cases in the criminal, plus other civil actions commensurate with the duties.

Q. In addition to being an attorney do you have another occupation that keeps you very busy?

A. Of course I handle a lot of football players. I am a sports agent for a number of athletes, right now, Walter Payton and Ray Guy, a bunch of other players.

Q. And that keeps you busy?

A. Yes.

Q. That kept you busy as well as being DA?

A. Yes.

Q. Do you know Wiley Fairchild?

A. Yes.

Q. How do you know him?

A. You grow up in Hattiesburg, everybody knows Fairchild Construction, Fairchilds. I represented the boy one time who got killed in an accident one time up in Hattiesburg. Been involved in a lot of political campaigns. He was always very, very active in political campaigns going all the way back to 1958. I managed Mr. Colmer, Bill Colmer's campaign and Mr. Fairchild was very active in that and assisted Carroll Gartin, lieutenant governor and Mr. Fairchild was a big contributor. And Maurice Dantin, he was a big contributor. So I was associated in those areas.

Q. Do you know his son Drew?

A. Well, I knew who he was, took him to a football game one time down in New Orleans and the boy working with me at the time, John Paul Robin, but as far as socially, no.

Q. Do you know a man named Skip Jarvis?

A. Do not.

Q. Do you know Carroll Ingram?

A. I know Carroll of course.

Q. Who is Carroll?

A. Carroll is a local attorney, he's from the Collins-Seminary area originally is where his home is, some kinship, I understand, with he and Mr. Fairchild. I don't know exactly what it is but most of the people up in that area are kin to one another. Carroll worked for Bill Waller. Worked all the way, worked his way through the University of Southern Mississippi, went to law school, came back worked for Francis Zachary's firm, became a partner, ran for the Mississippi Senate, served in the Senate and just -- he was a very popular, well-to-do political attorney here.

Q. Finally, do you know Judge Walter Nixon?

A. Yes, I do.

Q. What is your relationship with him?

A. Judge Nixon and I have been very close friends from, I'd say, approximately 1959 or 60.

Q. Does he know your family?

A. Yes.

Q. Do you know his family?

A. Yeah.

Q. Have you ever visited in his home?

A. Right. I've spent the night in his home, I've gone down and visited him, he's done the same with me.

Q. Have you ever traveled together?

A. Yes. We have been on some hunting trips together, fishing trips together, went to Destin, Florida a couple of times went down there and visited with him.

Q. Has he ever helped you?

A. Helped me? Not in any illegal manner.

Q. Forget that. Has he ever helped you as a friend?

A. Well, at one time -- Are you referring to the time --

Q. I'm not referring to anything. I'm asking you.

A. No, sir, there was no actual help. He attempted to help me.

Q. In a general fashion as friend to friend has Walter Nixon ever helped you as a friend might help another friend?

A. I don't mean to be evasive, I'm trying. At one time, to give you a incident, maybe I can --

MR. FAWER: Can we approach the bench a minute?

THE COURT: Yes. (AT THE BENCH:)

MR. FAWER: Your Honor, of course, ruled on the 404 about

MR. WEINGARTEN: -- That's not what I'm I'm not referring --

MR. FAWER: Excuse me. You didn't tell him the rules of the game.

MR. WEINGARTEN: I specifically told him last night not to get into --

MR. FAWER: You got a verbose fellow on your hands --

MR. WEINGARTEN: I'll withdraw the question.

MR. FAWER: I suggest you think through the question.

MR. WEINGARTEN: I asked him --

MR. FAWER: But I would answer it the same way he's answering it.

MR. WEINGARTEN: All right. It's withdrawn. (IN OPEN COURT:)

BY MR. WEINGARTNE:

Q. Is it fair to say that you two are close friends?

A. Yes, sir, I consider him very -- Well, one of my very, very close friends.

Q. Do you feel that way right this minute?

A. Yes, sir, I feel very close to him.

Q. Did it ever come to your attention that Judge Nixon might be involved in an oil deal with Wiley Fairchild?

A. Yes, sir.

Q. When did it come to your attention and under what circumstances?

A. Mr. Weingarten, I can't give you any specific date or specific instance. The time it comes to my mind, is that one night that we were out at, I want to say we were out at the Herrington House and it was, Carroll Ingram and his law partner Johnny Matthews and Judge Nixon. Now this is the thing that comes to my mind and somehow we got around to the subject of investments and Carroll was, I believe, representing Mr.

Fairchild and seemed like Judge Nixon just kind of in a, just general casual conversation type thing, said he was looking for some investments, you know, this type thing, how we got into it. And it seemed like the name Mr. Fairchild came up and he asked if I'd check with Mr. Fairchild, you know, to see if he has any and that was one time.

And another time I remember Judge Nixon asked me if I knew Wiley Fairchild, if I was familiar with Wiley Fairchild, that I was kind of shocked at it, because I thought everybody knew Wiley Fairchild. Of course Judge Nixon comes from a political, you know, very popular family down on the coast and I assumed everybody knew Wiley Fairchild, but that he didn't know him. And he indicated to me that he had a chance of maybe doing some investing with him and I gathered that what he was doing was trying to find out if I thought it would be, you know, if he would be a legitimate type person from it.

And I remember my, my impression was that Mr. Fairchild has a reputation of always getting close to people like governors --

MR. FAWER: Excuse me, Judge, may I please? I assume the question was what was said by each party, not what the impressions were, in his mind at the time. You don't really want that, do you?

BY MR. WEINGARTEN:

Q. Mr. Holmes, if counsel wants me to specifically direct you, what was the conversation you had with Judge Nixon about this particular matter?

MR. FAWER: I think he gave us that.

THE WITNESS:

A. My advice to him was that if Mr. Fairchild wanted him to do some investing with him, I felt it would be very, very safe, that I did not feel Mr. Fairchild, with the reputation that he had, would be any way that he would lose money investing with Mr. Fairchild.

BY MR. WEINGARTEN:

Q. You said that to Judge Nixon?

A. Right.

Q. Did there come a time when you got involved with Drew Fairchild's case?

A. Yes, sir.

Q. When was your first involvement?

A. My first knowledge or involvement?

Q. Start with knowledge.

A. Okay. There was a drug bust out at the Hattiesburg municipal airport, I don't remember the exact date, but it was sometime in 80, along about mid summer of 80, and the bust occurred out there. They made some arrests of some people that were in my area, but the federal government wanted to handle the case. Subsequent to that -- let me back up.

I had knowledge of the fact that Drew Fairchild had a lease on the airport and I had knowledge that the Mississippi Bureau of Narcotics had had the place kind of under surveillance out there because there had been a lot of planes and rumors about movement of dope out there and I talked with the bureau about it. The bust occurred because it involved the federal government following the airplane in. The federal government took jurisdiction of the case.

Bill Porter, who represented the airport, as well as Drew Fairchild, came to see me, told me that --

Q. Did you have a relationship with Mr. Porter?

A. Bill Porter and I are very close friends, yes, sir. Of course he was later killed in an airplane crash but Bill Porter came to me and said --

MR. FAWER: Excuse me, Judge, can we just have some dates, some relevant period?

MR. WEINGARTEN: I think Mr. Holmes is starting from the beginning and following through. I think it's very clear from his testimony when he's talking about.

MR. FAWER: I'm asking if it can be dated within a week or a month. Can it be done. We know the bust as on August 4.

MR. WEINGARTEN: Your Honor, may I elicit information from this witness as I choose?

MR. FAWER: Your Honor, I believe I have a right and a perfectly proper objection that a witness, when he gives a conversation I have the right to ask for the time, date and place within some reasonable parameters.

THE COURT: He has the right to bring it out the way he wants to bring it out and not the way you want it brought out.

MR. FAWER: I agree. He has an obligation at some point to give an approximate date.

THE COURT: He just got started, so give him a chance. Proceed.

THE WITNESS:

A. Sometime after the bust, and I'll be frank, I don't know how long, whether it was a day, a week, you know, when, but Bill came to my office and said that that they were accusing Drew of being involved with the dope bust out at the airport and that he wanted to know if I would call George Phillips, who was United States Attorney, who had been my county attorney up 'til a short time before that and make a recommendation whether he could go up there with him and I recommended to Mr. Porter, you take Drew up there, sit down, cooperate with the federal government, and cut the best plea bargain he could and I called George Phillips and he carried him up there.

Q. I neglected to ask you before who George Phillips was?

A. George Phillips was the county prosecuting attorney in Forrest County, I was the district attorney. The United States Attorney retired and George Phillips got appointed United

States Attorney.

Q. Okay. In fact did you make a call to Mr. Phillips as you remember?

A. Did I call him?

Q. Yes.

A. Oh, yes, I called him and set up the appointment.

Q. Can you tell us when you called him in relationship to the conversation that you related to with Porter?

A. Probably the same day, he could have very easily been in the office. That would have been the way I would have done it if he was there, I'd pick up the phone and call (gestures).

Q. To your knowledge did Drew and Porter drive up to Jackson and have a conversation with George Phillips in the United States --

A. I don't know.

Q. You don't know what happened in Jackson?

A. No, sir. What I'm saying, they did go and apparently reached a plea bargain agreement because I saw it.

Q. How would you know that? Oh, you saw it?

A. Yeah, I saw it written out.

Q. What happened thereafter? What involvement in the subsequent months did you have thereafter in the bust at the airport as DA?

A. Nothing really. I mean from that point forward I didn't have anything else to do with it. We were preparing to present to the local Forrest County Grand Jury, the fact that the bust was out there, that it had taken place, that the federal government was going to handle it. And it had been handled. At the same time and basically through a casual conversation, Mr. Porter was in my office, I asked him whatever happened to Drew? Whatever happened in the drug bust out there? I assumed, and Bill told me he worked out a good, real good plea arrangement in Jackson and he got to fussing, saying Drew never even paid me after I did all that work and went to Jackson a bunch of times and everything. And I said he didn't? Well, I said, I'm getting ready to present to my Grand Jury over here, not for indictments or anything, I was going to present what happened, and I'm going to call George Phillips to see what the status of it was.

I picked up the phone, I called George, I asked George about it, told him that Bill was in my office, that Bill was fussing about the fact that he hadn't gotten paid. I wanted to present it to the Grand Jury down here, not for indictment necessarily, and George told me, he said, well, he said we never did indict Watkins, the pilot, and we never did indict Drew and why don't you go ahead and handle the case down there?

And I said, okay, y'all never got indictments on them, I'll be glad to go ahead and/or I could have asked him, do you have any objection, I'll be glad to handle it here.

Q. You made the phone call?

A. Yes, sir, I made the phone call.

Q. And you were is soliciting information about the case?

A. That's right.

Q. So who do you think made the request, you or George Phillips?

A. What? To bring it down here?

Q. Yes.

A. I told him bring it down here, I'll go ahead -- I don't know. I know I was -- I probably asked for it.

Q. Did George Phillips express any opposition to it?

A. Oh, no. George said that's fine. Best I recall he said why don't you go ahead and indict the pilot? I said sure, send it on down.

Q. What action did you take?

A. I turned it over to Katie Madison, who was my assistant.

Q. And was the case indicted by the state?

A. Yes, sir. We called then and sent out subpoenas and sent out subpoenas for the Mississippi Bureau of Narcotics, Eddie Dickey and Mike Tyson came in. They presented it to the local Forrest County Grand Jury and they asked for indictments on Robert Watkins, the pilot, and on Drew Fairchild.

They did not ask for indictment on Robert Royals, although his name was in the group. Later on I found out the reason they didn't, because Mike Tyson said the Mississippi

Bureau of Narcotics didn't have enough evidence on him to make a case and Drew had given a statement to the federal people saying Robert was not involved in the thing. And so, based upon that, they didn't have anything to travel on.

Q. All right. So the indictment returned by the state named two defendants?

A. Named two defendants, yes.

Q. Is it fair to say the triggering mechanism for that indictment was Porter coming to you?

A. I'd say that's the thing that brought it to my attention, yes, but although I was going to present it anyway. But the triggering mechanism was the fact Bill was up there fussing Drew never had paid him.

Q. What was the -- How was the case worked out? What developed?

A. Okay. Drew came in after he was indicted, he entered a plea of not guilty, we set it for trial in the following January. We were preparing to try the case and Robert Watkins, who was a fugitive at that time, we couldn't find him, came up being located out of Dallas, Texas. They, it was brought to our attention that they had him and that Texas was getting ready to release him, because he was claiming he'd never been in Mississippi.

Katie came to me, as I recall, someone came to me, and I assume it would have been Katie, we got to have somebody that can identify Watkins, otherwise Texas is going to let him go. I picked up the phone and called Bill Porter, told Bill that I would be willing to make the same identical plea bargain arrangement with his client, Drew Fairchild, if he would cooperate with us in the identification.

As I recall, I tricked him into believing that Watkins was going to come in and testify against Drew and Bill said he'd call me back, which he called, he called Drew Fairchild, called me back and said yes, he'd be willing to do that, you know. We can work it out. He would be willing to plead guilty on that basis and not be sentenced until after he testifies against Watkins.

Q. Is it fair to say Drew Fairchild pled guilty in state court under your supervision?

A. Yes, under that or -- Katie, of course, handled it. He did plead guilty and the deal was he would not be sentenced until after he testified against Watkins.

Q. Okay.

A. At that time Watkins was in custody in Texas.

Q. And that was in January of 1982?

A. Yes, sir. That would be correct.

Q. Did it come to your attention sometime thereafter that Judge Nixon was interested in Drew's case?

A. Yes, sir. He pled guilty, when I say interested in, let me be perfectly candid let me just say what occurred. I don't want to, you know, the first time that Judge Nixon ever mentioned Drew Fairchild, the first time that I have any recollection of it, was after we had been on a hunting trip at Vicksburg.

I brought two turkeys back to Hattiesburg. Judge Nixon was in town, he came by the district attorney's office on a Friday afternoon, he was on his way back to the coast. Carroll Ingram, according to my recollection, was with him, you know, that day. We are riding out to the farm to pick up the turkeys. We had had --

Q. Who was riding out to the farm?

A. Judge Nixon and I was driving. He had left his car up at the district attorney's office. And we had had, likely or not, it was a Friday afternoon, we probably had a drink up in the office Friday afternoon, maybe two.

We was riding up to pick up the turkeys, this would have to be 6, 6:30, 7 o'clock, riding out, and Judge Nixon told me, he said, Bud, I never would have asked you to do anything against your oath of office, never asked you to do anything embarrassing to you, wouldn't ask you to do anything wrong. I said, yes, sir. He said, I was out at Mr. Fairchild's and he asked me to put in a good word for his boy, or would I say something to you about Drew. -- I think, I don't think he said Drew, I think he said his boy. I said, you know, well, I don't know. I don't know. What is it you want? You want an apology? I don't know. What does the man want?

Q. Are you saying did you say that to Judge Nixon?

A. Yeah, that was about my response. I can't remember this, because as I recall this was like in May of 82, you know, when this occurred. But that was about my response, I mean, I was feeling rich and good-looking and, you know, that would have been my typical type answer.

He said I'm not asking you to do anything, I'm just saying that Mr. Fairchild asked me to put in a good word. Well, I knew Mr. Fairchild and the judge were kind of getting to be buddy-buddies there.

Q. How did you know that?

A. Pardon?

Q. How did you know that?

A. He had told me, or Carroll Ingram had told me that they were or he told me, could a come from Mr. Fairchild.

Q. Did he tell you why he'd called Mr. Fairchild?

A. He could have. I don't recall offhand, it seemed like he might have told, somewhere during the conversation I knew there was a chance he was going to make some more oil and gas investments with him. Seemed like he said maybe Mr. Fairchild said they were going to take a trip somewhere, you know, now what point in time, I don't remember but all this was, at that time it was nothing real important to me to really remember, so, don't hold me and say it occurred on that time but general impression I had was they got to be on a first name type basis and friendly. So, I took it on myself, said, well, judge, hell, I'm district attorney, I'll pass it to the files. And he said no, I'm not asking you to do that. Now, I'm not asking you to do anything now.

Well, okay. We rode on out to the farm, got the turkey, went inside. I asked him to come in, have a drink.

Q. Whose house did you go to?

A. Go to mine, which was out in the Barrington community. We went inside. He said that he'd come in and have a drink, if I had some Royale Salute, that's kind of a joke between us, very expensive scotch whiskey, somebody gave it to me for Christmas a year earlier and I said I did. He came in, we had a drink, probably had a couple of drinks, and I had told him that I had already had this arrangement worked out with Bill Porter, the man had the same agreement that the federal court had offered, which was probation and a fine, in return for his cooperation. He said do you mind if I call and tell Wiley? Or he could have said, Wiley, Mr. Fairchild. He said did he know? I don't know. I assume he did. Carroll Ingram sure knew it. And so he said do you mind if I tell him? I said no, I don't care.

So he called him and as I recall the conversation it's something like --

Q. Who made the telephone call?

A. Pardon?

Q. Who made the telephone call?

A. He did. And he told him, he said, I'm out at, said do you remember the man we were talking about today? I'm out at his farm and he tells me that your son isn't going to jail, which was true, you know, because of the plea arrangement and I just wanted to call and tell you that. And he thanked him, told him I appreciate you letting me make some of these investments, you know, with you, and he said, you know, the judge's salary and the number of children that I'm trying to educate and so forth, it was kind of hard and I do appreciate this opportunity.

And, with that, I told him, I said let me speak to him. And I picked the phone up and I said, Mr. Fairchild, I want to let you know, I hope you don't think there's anything personal about Drew and us and he said no, I never thought that. I'm real embarrassed about that and so forth and I take full blame here because Judge Nixon did not ask me to say or do this, but I told him, I said, I said I want to let you know that I want Judge Nixon to have credit for helping the boy. Of course I was misleading him because I already had the arrangement worked out with Bill Porter.

And I told him, I said I'm going to pass the case to the files. You know, I told Mr. Fairchild that. And that was, you know, basically the sum and substance of it.

MR. WEINGARTEN: Thank you. Is this a good time to break, Your Honor?

THE COURT: We'll recess until nine o'clock in the morning.

(End of volume six.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 31, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 7

DAVID A. SCOTT
COURT REPORTER
Post Office Box 2202
Jackson, Mississippi 39225-2202

JANET CLEMENS
COURT REPORTER
Post Office Box 517
Oxford, Mississippi 38655

(OPEN COURT:)

(Mr. Weingarten continuing with direct examination of Mr. Holmes:)

THE COURT: Proceed.

MR. WEINGARTEN: Thank you, Your Honor.

BY MR. WEINGARTEN:

Q. Good morning, Mr. Holmes.

A. Good morning.

Q. Mr. Holmes, when we broke yesterday we were talking about an event that took place in your home. Can you just set the stage again? Where again do you live?

A. I live out on the other side of -- it's a town that connects Hattiesburg that's called Petal community, but it's the Barontown community. It's about eight miles as the crow flies from here.

Q. Do you refer to it as a farm?

A. Yes, we refer to it as a farm. When Jim Dukes and I bought the place, it was a farm. He lives out there and I live out there now, too, and we always referred to it as a farm.

Q. Is it in fact a farm?

A. Yes, sir. We grow soybeans out there and have pigs, hogs, you know, cattle, corn, grew a lot of corn this year.

Q. Is it to that farm that you and Judge Nixon drove?

A. Yes.

Q. Where is the DA's office?

A. As the crow flies from here it would be about four hundred yards right back behind the courthouse here.

Q. Right in town, in Hattiesburg?

A. Yes, sir.

Q. And did you testify yesterday that you drove with Judge Nixon from the courthouse to the farm?

A. Yes, sir. District attorneys office.

Q. When was the --

A. The complex, I probably called it the complex, the district attorney's office it's called the law enforcement complex but it's right behind the courthouse. We call it the complex.

Q. When did you first realize Judge Nixon was talking to you about Wiley's son?

A. I'd say about halfway out there to the farm.

Q. And what did he say?

MR. FAWER: Excuse me, Your Honor. This entire conversation was questioned about, question and answer,. yesterday. It's been gone right through, what took place in the car, what took place at the house and he's just going over it again and it's as if he wants to play the tape again. I object as it's repetitious.

MR. WEINGARTEN: I have very few questions. I'm asking specific questions about points that were not answered yesterday.

MR. FAWER: There's nothing specific about what did he say?

MR. WEINGARTEN: What specifically did he say.

MR. FAWER: I can read from yesterday's transcripts, that's the same question he asked yesterday. He's trying to put on the record twice what is already on the record once. If he can show it was not done yesterday, I withdraw my objection. I can show Your Honor where it was precisely questioned about what was said getting in the car, going in the car, getting out of the car and going in the house and what was said in the house.

MR. WEINGARTEN: Your Honor, I think I'm entitled had to clarify a few points about the witness' testimony.

THE COURT: Overruled, proceed.

BY MR. WEINGARTEN:

Q. Would you like me to repeat the question?

A. Yes, please.

Q. What specifically caused you to know that he was talking about Wiley Fairchild's son?

A. Words to me were a, he'd been out to Wiley's and that Mr. Fairchild -- I'm trying to get which sequence it was. The sequence, as I recall it, was I never would ask you to do anything against your oath of office, never ask you to do anything that would be embarrassing to you, I'm not asking you to do anything, but during the sequence of which came first, I don't remember. But he said, Wiley asked me to put in a good word with you for his boy.

Q. In what context?

A. As I recall, he told me that to begin with, he never would ask me to do anything wrong, do anything against my oath of office, anything that would be embarrassing to me, and I never would do that, but Wiley Fairchild asked me today to put in a good word with you -- He said, he asked me if you and I weren't good friends and I told him, yes, you know, we wer. And he said, well, would you mind putting in a good word for my boy?

Q. What specifically did the Judge tell you about his business or financial relationship with Wiley Fairchild?

A. Somewhere during the day, or during the event, he told me that he was talking to Wiley about making some more oil and gas investments with him.

Q. Did he mention anything about the previous investment?

A. I knew he had made some, you know, with him.

Q. Did he indicate to you how those investments were going?

A. I assume they were doing good because --

MR. FAWER: Wait a minute.

BY MR. WEINGARTEN:

Q. Don't assume.

MR. FAWER: Your Honor, with all due respect, this is supposed to be a lawyer on the stand who has some vague understanding of the rules of evidence.

MR. WEINGARTEN: We don't need any of your comments --

MR. FAWER: And we don't need to know what he thinks. Let's approach the bench and I think we ought to have some rules laid down that follow the rules of federal court. May we approach the bench? (AT SIDE BAR:)

THE COURT: He can't testify to what he assumes.

MR. WEINGARTEN: I understand that, but he doesn't have to make a speech.

MR. FAWER: He needs to be instructed to answer the question. Do you want to make a lecture to the jury or talk at the bench?

MR. WEINGARTEN: I see. And you haven't made any lectures?

MR. FAWER: Where are we at? You were the one who wanted speaking objections made at the bench when a speaking objection is made. You either deal with it in a lawyer-like way or don't deal with it.

MR. WEINGARTEN: You're dealing with it by making a speech about this man's legal capacity --

MR. FAWER: He's a lawyer and should know he's making an assumption and you're --

MR. WEINGARTEN: And I stopped him.

MR. FAWER: This is not Wiley Fairchild on the stand, this is not a man who has no understanding of the rules of court. I think the witness ought to be instructed --

THE COURT: Let's go back.

MR. FAWER: Could the witness be instructed to be responsive to the questions that are asked?

THE COURT: I'm not going to instruct him about anything. (IN OPEN COURT:)

BY MR. WEINGARTEN:

Q. Had Judge Nixon told you anything about the previous investment, or the prior investments with Mr. Fairchild?

A. Not that I recall on that particular day. I do know about him prior --

MR. FAWER: Just so we understand, is your question directed to this meeting?

MR. WEINGARTEN: Yes.

MR. FAWER: Then the answer has already been not at that time.

MR. WEINGARTEN: Thank you, sir.

THE WITNESS:

A. I know about it from prior --

BY MR. WEINGARTEN:

Q. That's okay. If I want it elicited, I'll ask it. Mr. Holmes, yesterday you said there was some drinking going on both prior to arrival at the farm and after arrival at the farm. Explain that please.

A. All right, sir. On Friday afternoon at the district attorneys office, sometimes on weekends, we will get in there, after we shut the office down and sit back in the office and some people around, whoever happens to be up there, whether they be at the sheriff's office, someone like that will come in there, the secretaries and they will have a drink or maybe two drinks before they go home, because they're not coming to work on Saturday. On this particular occasions, one of these occasions there was a couple of drinks, I know Fred Cook was up there, the football player.

Q. Did you and the judge have a drink or two at your office?

A. Yes.

Q. And did you and the judge have drinks once you arrived at your farm?

A. That's correct.

Q. How did this drinking affect it?

A. Well, just like any drinking affects it now.

Q. Did it impair your ability to recall?

A. No, sir, I'm recalling this.

Q. What did you and the judge do after the call?

A. We sat there and talked, you know, just exchanged pleasantries. I mean nothing of any significance, and then we left and went to Bonnie and Clyde's.

Q. Had the judge been to your office before?

A. Yes, sir.

Q. On more than one occasion?

A. Yes, sir.

Q. I'm marking Government Exhibit 20?

A. Beg pardon?

Q. I'm announcing to the Court I'm marking something Government's Exhibit 20. I hand you Government Exhibit 20. Ask if you can identify it, sir?

A. Yes, sir, this is an appointment book that Jimmie Pace, who is my secretary, kept. Quite frankly I did not know she kept the thing until after this grand jury proceeding started, I believe it came up, question how many times Drew Fairchild came to the office. I could only remember one time, and Jimmie told me she had the appointments book. I didn't know she kept the thing, but this is one she kept, her appointment book.

Q. Did she keep it for you?

A. To be frank, I don't know why she kept it. I assume it was for her. I didn't know she kept the thing.

MR. WEINGARTEN: I move into evidence Government Exhibit 20.

MR. FAWER: No objection.

(Exhibit No. G-20 marked).

BY MR. WEINGARTEN:

Q. Did you review that appointment book in an effort to date the call from your farm?

A. I did. Or she did for me.

Q. Did you also take a look?

A. Yes, sir.

Q. What did you find?

A. Found that on the date of May 14th was the date that the judge and Carroll Ingram appeared in there, it was written I believe on a Thursday, actually it was on a Friday, you can tell she was using the wrong column.

Q. Would you open that up to May 14?

A. Yes, sir.

Q. What do you find there, Mr. Holmes?

A. Wait a minute. I hadn't got it yet. All right. Got here, four and 4:15 on the date, says here May 13th, but it's really on May 14th.

Q. Why do you say that?

A. Because I know it was on a Friday, because I went to a wedding the next day in Jackson where Gary Turner got married, he got married on May 15th. I know an incident that occurred out at Bonnie and Clyde's that night is the reason Jimmie remembers it very well.

Q. When you go through that book, are there other occasions when Judge Nixon visits your office?

A. Yes, sir.

Q. I ask that you turn to June 24th?

A. All right, sir.

Q. What's noted there?

A. At two o'clock Judge Nixon is in there.

Q. What about July 15th?

A. No, sir. All I see is George --

Q. How about July 16th?

A. 16th? I thought you said 15th. Yes, sir.

Q. What day of the week is July 16?

A. July 16 is on a Friday.

Q. What about October 20?

A. Carroll Ingram and Judge Nixon both.

Q. What day of the week is October 20?

A. October 20 would be on a Wednesday.

Q. Okay. Now following the call from the farm, how did you handle Drew's case?

A. I let it just sit until December, passed it to the file.

Q. Did you feel that you had incurred any obligation as a result of what happened at the farm?

A. Yes, sir.

Q. What was that obligation?

A. Felt like I had made a promise to Wiley Fairchild that I was going to pass it to the files.

Q. What does it mean to pass the case to the files?

A. Pass to the file literally means move it from the active docket to the inactive docket.

Q. What is the legal significance of that?

A. Just remains inactive until some one brings it back out.

Q. Who has the authority to pass a case to the file?

A. Well, the district attorney -- I can recommend it, but the court is the one who actually has to sign the order. Court can refuse to pass one.

Q. Did there come a time when in fact you passed the case to the files?

A. Yes, sir. Well, I recommended it, I mean I filed a motion asking the court to enter an order passing it. But that's technical, from a practical point of view, say I passed it to the file.

MR. WEINGARTEN: May I have the Government Exhibit passing it to the files?

BY MR. WEINGARTEN:

Q. I hand you Government Exhibit 4, ask if you can identify it, sir?

A. Yes, sir.

Q. What is that?

A. That's an order passing it to the file.

Q. Who prepared that order?

A. Actually Glenn White dictated it, and I believe my secretary, Jimmie Pace, typed it, I believe.

Q. Who is Glenn White?

A. Glenn White was my assistant district attorney. He did it at my instruction.

Q. What legal reason is given for passing the case to the file?

A. I can read it to you if you want.

Q. Just summarize if you can?

A. Been a period of time in there since the plea of guilty that we'd been trying to bring in Watkins, who Drew was going to be testifying against, weren't going to sentence him until after Watkins had testified, and that it was made known that -- in the grand jury, spelled out in here, Drew had cooperated, he had cooperated, he's the one that signed the affidavit on him, and on the strength of his affidavit we were able to hold Watkins out in Texas for extradition purposes.

Q. Is all that true?

A. Yes, sir, that was true. All that was true.

Q. All right. Why did you order Glenn White to make the request to pass the case to the files?

A. Well, like I said, because I felt, primarily because I had told Mr. Fairchild on the phone that I was going to pass it to the file.

Q. Why did you do it at this particular time?

A. Well, of course the big motivating thing at this time was Judge Weldy was leaving office. Bill Porter, who represented Drew Fairchild, was raising cain with me because Judge Weldy was leaving and he had supported Judge Weldy, Judge McKenzie was coming on in a matter of a few days, Judge McKenzie was going to be able to have the power to totally ignore any kind of plea bargain we had and go ahead and sentence him to the full five years, three years, whatever the maximum was. Bill was afraid that's exactly what Dickie was going to do, Judge McKenzie was going to do. So he was fussing about it. I had already made the promise to Mr. Fairchild that I was going to do it, so I just did it.

Q. What was the status of Watkins at this time?

A. At that time he was fighting extradition. We had him down in Florida, and he was opposing extradition. They had a lawyer down there by the name of Bowman who was actually contesting bringing him back up here. We were in the process of trying to get him up here. They were in the process of trying to keep us from it.

Q. Had there not been the call to Wiley Fairchild, would you have moved to pass the case to files in December, 1982?

A. No, sir, I would have -- what I likely would have done --

Q. Don't testify to that.

A. I'll tell you what I would have done then.

Q. No, only what you did?

A. I passed it to the file is what I did.

Q. All right. How long did the case remain in the file?

A. About three weeks.

Q. And what happened?

A. Well, I brought it back out.

Q. Why?

A. Well, got Watkins got back up here where I could prosecute him.

Q. What was the motivation to take the case out of files at that time?

A. Well, because I had made the statement once Watkins got back I was going to open it up. That and the fact it was an awful lot of publicity on it, the television, newspapers had picked it up, they were talking about the fact this very wealthy, son of a very, very wealthy man in Hattiesburg, like his case had been swept under the rug, they were editorializing about it. I made the public statement that when we got Watkins got back up here I was going to bring it back out of the file if we could get him. One thing I'd like to point out, we had a very similar case on another drug bust where all the people were from Tennessee, just like this one, we thought we could extradite them and the federal courts in Tennessee wouldn't let us extradite the people back Hattiesburg to try them. There was a big question whether we could even get Watkins out of Florida. We did work out an arrangement where he did come.

Q. What happened to the Watkins case in 1983?

A. In 83?

Q. Once Watkins came back?

A. He came back, put under hundred thousand dollars bond, he remained under hundred thousand dollars bond from down there. That was all part of the arrangement, you know, his lawyer agreed to it. Came back up here, set the case for trial, and he jumped bond again.

Q. So Watkins was not prosecuted?

A. No, sir, it was set for trial.

Q. What happened to Drew's case?

A. Drew's case just remained, just there again, go back, he was not to be sentenced until after he testimony. That was part of the plea bargain agreement.

Q. When did you leave office?

A. I left office January 1st of 1984.

Q. What was the status of Drew's case?

A. It was still on active docket, waiting to be sentenced.

Q. And after you left office did it come to your attention the Department of Justice was conducting an investigation in the Southern District of Mississippi?

A. Yes, sir.

Q. Where did you learn that first?

A. I didn't realize who it was. Got a call one day from Judge Nixon, he was quite, quite incensed that some people had been by to see him -- I didn't know who it was, he didn't say who it was -- inquiring of him whether or not he had tried to influence or did influence the handing of the Drew Fairchild case.

Q. Was this a face to face conversation you had?

A. No, sir, this was a telephone conversation. I later had a face to face conversation with him.

Q. Start with the telephone conversation, what was said by Judge Nixon?

A. He told me some people had come by and were accusing him, I say accusing him, someone had made some accusations that he had been involved in trying to influence or did influence the handling of the Drew Fairchild case, and told me he told them he had never talked to anyone, didn't know anything about the case, he never talked to anyone at any time about the case, he had nothing to do with it, he said that's what I told them. I said okay.

Q. Did you -- continue, please. Was that the extent of the conversation?

A. That was pretty well, very, very emphatic he had never talked to anybody and never talked to anybody, didn't know anything about it, never had any contact with anybody. So I just said yes, sir.

Q. Was that true?

A. No, he and I talked about it.

Q. Did you contradict him?

A. No.

Q. Why not?

A. Well, wasn't, I just didn't get in an argument with him about it. That's what he said, I just accepted it face value, if that's your position that's your position. I'll go along with it.

Q. Did you subsequently have a face to face meeting with Judge Nixon?

A. Yes, sir.

Q. How soon after?

A. I'd say the next, oh, couple weeks. Whether that was before I met with you all or after I don't know. I do know I had a face to face meeting.

Q. Where was the face to face?

A. It was down in Biloxi at his chambers.

Q. What was discussed there?

A. He had told me again that people, you know, about people coming by to see him, he was again very, very angry, you know, about somebody making these type accusations about him having anything to do with it. He was very emphatic, saying I never talked to anybody in the federal system, never talked to anybody in the state system. I've had nothing to do with it in any way in the world. I remember he said if I thought these minerals or anything I've done with Wiley, anything to do with that, I wouldn't be involved with them, just on and on. He asked me then if I could, if I knew whether or not the conversation we had from the farm was taped, and I told him I had no way of knowing, asked me to find out.

Q. He asked you if you could find out?

A. Yes.

Q. Had you taped the call?

A. I didn't, no.

Q. How did you respond to Judge Nixon when he told you he never discussed the case with anybody on the state level?

A. I didn't argue with him. Didn't dispute him.

Q. Did you affirm or confirm?

A. Pardon?

Q. Did you indicate to him that was your understanding?

A. Well, in my mind I thought --

MR. PAWER: Excuse me. The question is, I think, what he said, did. Am I correct? Is that what you're inquiring?

MR. WEINGARTEN: Yes.

BY MR. WEINGARTEN:

Q. Just answer the question.

A. Okay. He told me that, Mr. Weingarten, I don't remember specifically saying, if that's what you want me to say I'll say it, you know. I don't recall making a verbal statement to that effect, but that was my position on it.

Q. When he asked you to find out if the call was taped, what did you do?

A. I went to Carroll Ingram.

Q. Did you ask him?

A. I did.

Q. What did Carroll say?

A. Carroll said that he knew, he did not know Mr. Fairchild had any tape recording out there at his house, that it was just [illegible]o -- he didn't believe it, that he thought, he said Mr. Fairchild generally by six thirty, seven o'clock at night would generally be out of it from drinking, and that he knew, did not know of him having any type of taping. He never heard about it anyway.

Q. Did you --

A. He never heard about it anyway.

Q. Did you report that information back to Judge Nixon?

A. I'm sure I did. I can't remember the date, but I told him.

Q. When did all these conversations take place?

A. I guess in around the time of the first investigation started.

Q. Can you be any more specific than that?

A. Well, when was the investigation?

Q. You answer the question as best you can.

A. Well, it would have to be in the, been in, I guess, April of 84, I assume, or May, I believe. It's right in that time. In the springtime of 84.

Q. Do you recall being interviewed by the FBI?

A. Yes, sir.

Q. Do you recall it being April 25, 1984?

A. That was the date of it, yes, sir.

Q. Were these conversations with Judge Nixon, when would they have taken place in connection with the FBI interview?

A. I would say both before and after.

Q. Did there come a time when you had conversations with Carroll Ingram about the call?

A. Oh, yes.

Q. Did there come a time when you learned that Carroll Ingram may have cooperated with the federal government?

A. Yes, sir.

Q. When was that and under what circumstances?

A. I'm going to say it was later on in the year or following year. I'm trying to get my sequence. I'd say along about probably in, probably along about in January or February, probably.

Q. Of what year?

A. Probably 85.

Q. And what did you learn?

A. He told me that he had been to Washington, that he had given a statement that, to the effect that I had told him that the only thing I was concerned about was the telephone call from my farm.

Q. Had you in fact said that?

A. I did. I told him, you know, in our conversation that, the rest of the bull thrown at me, I knew there was no substance to that, but there was substance to the fact that we did have that phone call and I covered it up and I was concerned about and that was the only thing I was concerned about.

Q. When Carroll Ingram advised you of that, what did you do?

A. I told him. I said, Carroll --

Q. Forget the conversation.

A. Okay. What did I do? I came back over and I talked with Jim Dukes about it, told him about the turn of events. I thought that it was only proper that --

MR. FAWER: Excuse me. These are conversations where he's talking to his attorney, I assume? Am I correct?

BY MR. WEINGARTEN:

Q. Is Mr. Dukes your attorney?

A. He is now, at that time I didn't have one. I didn't think I needed one.

MR. FAWER: I would object to any conversations. I've sat back and let a lot of hearsay conversations go in about Carroll Ingram. Of course I assume he's going to be here. Jim Dukes is a law partner of the witness and I object.

THE COURT: Sustained.

BY MR. WEINGARTEN:

Q. Do you have any conversations or meet vis-a-vis with Judge Nixon at this time?

A. Yes, I called Judge Nixon, told him I needed to talk to him, thought we needed to go talk. He was over here, waiting, had a jury, I believe was out, and we sat in his car and talked and I told him about my conversation with Carroll and --

Q. What time of day was this?

A. This was, I'm sure, probably 7 o'clock at night. It was dark.

Q. And where were you?

A. Downstairs, right outside the courthouse.

Q. Outside of this courthouse?

A. Yes, sir.

Q. What arrangement had been made to meet Judge Nixon?

A. I called him on the phone, he told me we'd meet in the car, he'd be downstairs, he had a jury out, he didn't feel he could leave from here.

Q. You proceeded from your office to the parking lot?

A. Yes.

Q. What happened then?

A. I just told him about my conversation with Carroll.

Q. Let's just make it clear. Did you see Judge Nixon?

A. Yes, he came down, sat in the car, as I said, in his car. We sat in the car, I told him I talked to Carroll, that Carroll had told me that he had told about the phone call and so forth and I was trying to encourage him, let's go ahead and tell about the thing, because I didn't see there was anything to hide on it, that, you know. There was nothing about the phone call to hide that was of any, you know, just didn't see any, you know, sense in it. And his basic response was he didn't know what I was talking about, he didn't know about the phone call and then chastised me and wanted to know why I told Carroll about it. And I told him about the tapes and I said, by God, you're the one who asked me to find out, because there's no skin off my teeth, I mean the phone call, I had done absolutely nothing from a criminal point of view, didn't see where he'd done anything, you know, about calling Mr. Fairchild, saw no reason to hide it. And that was, you know, my position on it.

Q. And how did Judge Nixon respond?

A. Basically that he didn't know anything about a phone call.

Q. Have you had any other conversations with Judge Nixon about the phone call?

A. Yes, sir. I had one more and that was at Sam Patterson's party, it was the former chief deputy marshal, at the retirement party. I saw Judge Nixon down there and I was getting ready to go to trial myself, I had been indicted, and the only thing I was really concerned about in the indictment that the government brought against me was the part about the phone call, and I told him that we needed to get together, talk about it and he told me, he said, well, I don't know why you picked up the phone and called Wiley and told him that you were going to honor the deal with Bill Porter. And I said, well, Judge I don't know what you're talking about. And he said, I don't know why you called and told him you're going to honor the deal you had with Bill Porter. I said okay and that was the last conversation.

Q. I believe you just indicated that you were indicted by the federal Grand Jury in Hattiesburg?

A. Yes.

Q. Do you recall when that was, sir?

A. Pardon?

Q. Do you recall when that was, sir?

A. Seemed like it was in the spring of 85, I think.

Q. I hand you what's been marked as Government's Exhibit 21 and ask you if you can identify it?

A. Yes, sir. That's my indictment.

MR. WEINGARTEN: We move Government's Exhibit 21 into evidence.

MR. FAWER: The indictment itself or the plea?

MR. WEINGARTEN: The indictment.

THE WITNESS: The indictment.

MR. FAWER: Could we just approach the bench one moment, Judge?

THE COURT: Sure.

(Side bar.

MR. FAWER: Your Honor, I have no problem with this except one thing, I don't think the jury should see this. Counts one, two and three concern basically the same matters as this case do. As you get to counts four and five, as Mr. Weingarten knows, count four is basically a 404 B charge. I --

MR. WEINGARTEN: It's not a 404 charge.

MR. FAWER: Yes, it is.

MR. WEINGARTEN: Why don't we make it easy? Are you going to cross-examine him on his guilt on these?

MR. FAWER: Why don't you question him on --

MR. WEINGARTEN: If the answer is no, I'll withdraw it.

MR. FAWER: -- the remaining counts four and five, that's all you got to do? The allegations have nothing to do with this case, they have to do with Senator Burgin and you don't want the jury nor the Judge having any allegations not related to this case.

MR. WEINGARTEN: It's really simple, if you will say you're not going to cross-examine him on them, I'll withdraw it.

MR. FAWER: I'm not going to make that commitment, not about questioning if he has two charges they dismissed, they relate to two conversations they claim he had, that he denied, with an ex-Senator Burgin in the house, the legislature here in Mississippi, which it is, not in any way tied into this case.

THE COURT: Did he plead guilty?

MR. WEINGARTEN: He plead not guilty, there was a plea bargain, if there's not going to be any cross-examination, will not go into one, two and three, I have no problem just on count four and five.

MR. FAWER: What's the matter with you --

MR. WEINGARTEN: Because there's going to be evidence, I'm sure, that this man thought he was going to be charged --

MR. FAWER: Not about that, I'm not going to, -- Do I have to tell you again? I'm not going to question him about

Burgin or about that? You want to hear it again.

MR. WEINGARTEN: Well, what I'm going to do is not introduce it this at this time. I'll let Mr. Fawer have his cross and if I want to introduce it later, I will.

MR. FAWER: That's fine.

THE COURT: Okay. (IN OPEN COURT:)

BY MR. WEINGARTEN:

Q. Mr. Holmes, you indicated, you were indicted by the federal Grand Jury?

A. That's right.

Q. How did you plead to the charges at arraignment?

A. Not guilty.

Q. Was a trial subsequently scheduled?

A. Yes, sir.

Q. Was a jury picked?

A. Yes, sir.

Q. And before evidence began, what happened?

A. Before evidence began, the attorneys, my attorneys and --

Q. We'll make it simple so that no conversations are elicited. Did you plead guilty to a reduced charge?

A. Yes, sir.

MR. FAWER: To what?

MR. WEINGARTEN: To a reduced charge.

BY MR. WEINGARTEN:

Q. Did you plead guilty pursuant to an information?

A. Yes.

Q. Pardon?

A. Yes.

Q. And was there a plea agreement?

A. Yes.

Q. I hand you what's been marked Government's Exhibit 22 and 23, ask if you can identify it?

A. Yes, sir, this is, 22 is the information and 23 is the plea agreement.

MR. WEINGARTEN: We move those into evidence.

MR. PAWER: No objection.

(Exhibit G-22 marked.)

MR. WEINGARTEN: I ask that they be read to the jury. Any objection, Mr. Pawer, to reading them to the jury?

MR. PAWER: They are in evidence, aren't they?

MR. WEINGARTEN: Government's Exhibit 22 Information, United States District Court for the Southern District of Mississippi. (Mr. Weingarten reads Government's Exhibit No. 22 to the jury.)

MR. PAWER: Excuse me, Your Honor may we have this read to the jury as he did before?

THE COURT: Guilty pleas entered by government witnesses may not under any circumstances be considered by you as proof of the guilt nor of the innocence or the criminal defendant. A criminal defendant is entitled to have the issue of his guilt determined solely on the basis of evidence admitted specifically against him and not upon whether a government witness pled guilty to the same or similar charges. You may take into account a guilty plea of government witnesses only when you're considering the credibility of that witness.

MR. FAWER: Thank you.

(Exhibit No. G-23 marked).

BY MR. WEINGARTEN:

Q. Mr. Holmes, pursuant to your plea, were you sentenced?

A. Yes, I was.

Q. Let me ask first, what judge did you plead before?

A. Judge Patrick Carr.

Q. Where does he sit?

A. New Orleans, Louisiana.

Q. And were you sentenced by Judge Carr as well?

A. I was.

Q. What sentence did you receive?

A. Gave me a ten thousand dollars fine and one year imprisonment.

Q. And have you challenged that sentence?

A. Yes.

Q. Generally speaking, what were the grounds of your challenge?

MR. FAWER: Your Honor, I object on the grounds of relevancy, on his direct case, as to why this witness got a sentence and is now challenging it on appeal. How does that bear on the issues in terms of the direct case?

MR. WEINGARTEN: I think the jury is entitled to know the situation.

MR. FAWER: It's only entitled to know it because it is embarrassing. I don't understand other than its embarrassment to the government, I don't see it's probative nature in this case. I would object and ask the Court strike the question.

THE COURT: Overruled. He can answer.

BY MR. WEINGARTEN:

Q. Have you challenged your sentence?

A. I have.

Q. Generally speaking on what grounds?

A. The statute provides for either a payment of money, maximum of ten thousand dollars, or a term in the penitentiary, but not both.

Q. So you're saying the judge can't do both, one or the other?

A. Right. Under all the case law --

Q. Don't get into the technical analysis. What position did the government take on your challenge?

A. I think you very erroneously are fighting me.

Q. What position did the sentencing judge take?

A. I think he erroneously agreed with you.

Q. Are you seeking an appeal of the judge's ruling?

A. Yes, sir, it's appealed right now to the Fifth Circuit.

Q. What position has the government taken on the appeal?

A. You are objecting to it, fighting it, opposing it, whatever the word is.

Q. After your indictment, pursuant to the rules of discovery, did you receive grand jury transcripts of various witnesses?

A. I did.

Q. Just explain what discovery means?

MR. FAWER: Excuse me, Your Honor. I would again object. He's seeking to blunt the cross-examination by explaining what the witness had in his possession before he chose to change his plea. If he's going to conduct the cross, he ought to get paid by the defense, but it seems to me it's improper in this case. We've taken him through the plea without my objection. He's taken him to the point of the situation where they are fighting over what the sentence should be. We know the man, he's now asking him --

MR. WEINGARTEN: This is a monologue. I object to these monologues before the jury. If he has a well founded objection, let's take to it the bench.

MR. FAWER: I've been in the courtroom a fair number of years. Objections are to be made in the well, which I'm making now. I object to something which has no probative force in this case, except to sort of soften the cross-examination being gone into by Mr. Weingarten. I would think he would know that, too. I would like an explanation of how that is probative to the issues charged in the case. I would move this be stricken, or he be not allowed to go into it.

THE COURT: Overruled. Proceed.

BY MR. WEINGARTEN:

Q. After your indictment, Mr. Holmes, did you receive grand jury transcripts pursuant to the rules of discovery?

A. Yes.

Q. And did you read them?

A. Yes, sir.

Q. And did you read Wiley Fairchild's grand jury?

A. I did.

Q. Did you read Drew Fairchild's grand jury?

A. I did.

Q. Did they make certain allegations that bothered you?

A. I can't remember any Drew made particularly, refresh my memory. Wiley made a lot of wild statements, just out and out lies.

Q. Excuse me?

A. Wiley made a lot of just out and out lies.

Q. Did he talk about Bill Porter's death?

A. Yes.

MR. FAWER: Excuse me, Your Honor. With all due respect, he's being asked to comment on the extra judicial statements of another government witness. That's what this is all -- he's being asked what his impression was of reading Wiley Fairchild's grand jury testimony. How can that be probative in this courtroom?

MR. WEINGARTEN: Opening statement Mr. Fawer made certain representations which obviously are going to be germane in this trial. I have a right to pursue this with this witness.

MR. FAWER: I have no problem if that's so, but what statements did I make in opening that would permit this? I made statements, I will go into it on cross, that the man read his testimony before he changed his plea, but what has that got to do with his finding out there were some wild things he felt Wiley Fairchild said about his involvement in Bill Porter's death or whatever else it might be. I don't understand how that under the rules of evidence can be admissible,.

MR. WEINGARTEN: I request permission to proceed.

THE COURT: Proceed. Overruled.

BY MR. WEINGARTEN:

Q. Mr. Holmes, did Wiley Fairchild make certain claims about your involvement with Bill Porter's death?

A. He did.

Q. Were you given an opportunity to clear that up in the grand jury after your plea?

A. Yes, sir.

Q. Did Wiley Fairchild make certain claims about your involvement with fixing Dr. Shows' son's case?

A. Yes.

Q. Did you clear that up in the grand jury?

A. I don't know whether I cleared it up, I know I gave them my version of it. Whether it was cleared up, I don't know. But I did tell them my version of it.

Q. Was your version true?

A. Certainly this was true. You all have the records.

Q. Did Wiley Fairchild make certain claims that Billy Shows' case was fixed by Judge Nixon?

A. He certainly did.

Q. Did you clear that up?

A. I don't know whether I cleared it up. I felt like you all had the records.

Q. Did you testify about that?

A. I did.

Q. Did you testify to the grand jury Judge Nixon was not the judge in that case?

A. I did.

Q. Did you read Wiley Fairchild's testimony where indicated that Bob Royals was blackmailing him pursuant to your instruction?

A. I don't recall him saying that in the grand jury. I read it in the newspaper where apparently he testified up here about that.

Q. Did you send Bob Royals to Wiley Fairchild to blackmail him?

A. Never, never, never.

Q. Did you ever blackmail Wiley Fairchild?

A. Him or nobody else even thought about it.

Q. Who is Bob Royals by the way?

A. Bob Royals is a man that, he's got a television place out at the place Mr. Fairchild I understand owns, that he works for Mr. Fairchild, or did work for him. Satellite company, used to be a rural mail carrier. He was a professional pilot.

Q. Did he work for you at all?

A. Never been on my payroll. He has flown in a jet that we used to own, he used to fly what we call right seat, which would be copilot. You have to have two pilots. We would hire him from time to time to fly right seat with our regular pilot at that time.

Q. Was he Drew's partner at the airport the night of the bust?

A. I don't know what his actual relatonship -- I know he worked out there with Drew.

Q. Did you prosecute him when you prosecuted Drew?

A. Did not.

Q. Why not?

A. I presented the case to the Forest County grand jury, asked the Bureau of Narcotics who they wanted to indict, they presented evidence on Drew, they presented evidence on Watkins, we got the indictments on them. You asked me that yesterday, the question, I asked Mike Tyson with the Mississippi Bureau of Narcotics why didn't you ask for an indictment on Bob Royals? He said we did not have a case on him. At that time, if you'll go back and check the government's file, Drew Fairchild was saying that Bob Royals had nothing to do with it out there, so that's the only evidence we had. No one asked us to indict him. I'd have indicted him in a New York minute if I'd known.

Q. Did you not indict him because of any relationship you had with him?

A. Not him or anybody else.

Q. Do you know where Royals is now?

A. I think he's in the joint.

Q. What did you say?

A. Federal correction system.

Q. Has he been convicted of the same crimes committed by Drew Fairchild?

A. All I know is what I read in the newspaper. I stayed away from it. I had enough of it over here.

Q. Did you read Wiley Fairchild's testimony about the call from the farm?

A. Yes, sir.

Q. Have you tailored your testimony at this trial in any way, shape or form, because of what you read in Wiley Fairchild's grand jury?

A. Mr. Weingarten, I'm not taylorlng my testimony for anybody on anything. Whether you all like it or don't like it, I'm telling it like it is.

MR. WEINGARTEN: Thank you, Mr. Holmes.

MR. FAWER: May I, Your Honor?

CROSS-EXAMINATION

BY MR. FAWER:

Q. Mr. Holmes, I'm Mike Fawer. We met several years ago, really haven't had a chance to speak since, have we?

A. Right.

Q. Let me touch on something you just mentioned. The good prosecutor had occasion to ask you, he afforded -- we talk about the government, this is not some abstract thing we're talking about, it's the man who just finished; whenever there's been reference to the government it's Reid Weingarten, right?

A. Yes, sir.

Q. He's the man who when you came in I guess in June 18th I think you went back after your plea agreement and testified, am I right?

A. Whatever the date was.

Q. He let you straighten out this erroneous impression the grand jury had on the Shows incident, right?

A. Run that by me again?

Q. The only time that the grand jury, as far as you know, learned the true facts concerning Shows is when you testified in late June, 1985, correct?

A. Yes, sir. What Mr. Fairchild said was totally off base, and he allowed me to clear it up.

Q. The grand jury -- this jury has already heard what Wiley Fairchild said.

A. I didn't know that.

Q. I'm telling you so we can save some time. The bottom line is that you knew that the records of the Court are clear there never, Judge Nixon had absolutely nothing to do with Billy Ray Shows' case?

A. Absolutely nothing.

Q. There was never any money shared by you and Judge Nixon, neither on that case or any other case?

A. No, sir.

Q. Correct?

A. That is correct.

Q. That Wiley Fairchild's suggestions of wrongdoing in that case were just the fabrication of an old man?

A. Whatever it was, I don't know what it was intentional, meanness or fabrication.

Q. He in fact, contrary to the Court records, said there was a motion to reduce granted by Judge Nixon in that case, when in fact Judge Nixon hadn't been involved, and you lost the motion to reduce that you filed?

A. That's correct.

Q. So the jury understands, you were a private practitioner, it was in the late 70's when this all took place, right?

A. Yes, sir.

Q. The truth, however, was never presented by Reid Weingarten to the grand jury to that date, am I right?

A. I have no way of knowing. All I know is what, you know, what I've seen, Mr. Fawer.

Q. We know you were indicted on March 29, 1985, correct?

A. Yes.

Q. The grand jury, you read Wiley Fairchild's testimony, right?

A. Right.

Q. He was, this information was elicited by this gentleman from him on November 28th, 1984, correct?

A. Whatever the dates were. I assume they are right, I'm just assuming.

Q. The grand jury that chose to indict you had the erroneous information that this gentleman allowed to be put into that grand jury, am I correct?

A. I'm assuming that will be correct.

Q. Do you have any question in your mind about that?

A. No, sir.

Q. You were indicted, right?

A. Yes, I was.

Q. You know of other information that this gentleman elicited that was -- by the way, was the Porter, you read the Fairchild grand jury, right?

A. Yes.

Q. Is it not a fact that Reid Weingarten went out of his way to solicit from Wiley Fairchild that nonsensical story that Fairchild told about the death of Bill Porter?

MR. WEINGARTEN: I object to the characterization, Your Honor.

MR. FAWER: Perfectly fine; if you want to see what you read in the grand jury --

MR. WEINGARTEN: I object to the relevance.

MR. FAWER: It's as relevant as his questioning about it. He brought it out. I objected, Your Honor said it was perfectly permissible, I'm just finishing it up.

THE COURT: Overruled. Proceed.

BY MR. FAWER:

Q. You read Wiley Fairchild's testimony?

A. I read it.

Q. Sitting there getting ready to go to trial in June of 85, right?

A. Yes, sir.

Q. Read it, lo and behold, I mean there is this man being egged on to tell this nonsensical story suggesting you were involved in the death of Bill Porter, right?

A. Right.

Q. The man doing the questioning was none other than Reid Weingarten, right?

A. There was several in there.

Q. Would you like to see who was doing the questioning?

A. If you say it was him, your an officer of the court, I'm sure you wouldn't misrepresent.

Q. I wouldn't. I think he would object if I was mischaracterizing it. You're how old, sir?

A. 53.

Q. You were for the most part of your professional life a personal injury lawyer, am I accurate about that?

A. Yes, sir.

Q. You were not basically a criminal lawyer?

A. No, sir.

Q. You've done some criminal work, successful personal injury lawyer in Hattiesburg?

A. Yes, sir.

Q. I'm sorry, you graduated law school, when did you begin practice?

A. 58.

Q. In 58. And you, until 1980, when you became district attorney, when you were elected district attorney, you were basically a personal injury lawyer?

A. That's correct.

Q. You've indicated of course you also had, you had the foresight or at least the -- you could spot sports talent in the local area; you did spot some of that, right?

A. Right.

Q. You've represented some sports figures who have been successful?

A. Right.

Q. You have a number of other ventures aside from your law practice?

A. Right.

Q. You're involved, I think, you would describe yourself as a successful businessman?

A. Yes, sir.

Q. You're involved in the ownership of some clubs, am I right?

A. Correct.

Q. Some restaurants, or am I wrong about that?

A. They have food and --

Q. You can get something to eat there as well as to drink?

A. Yes, sir.

Q. As I understand it, you have for a number of years, Judge Nixon is not your only friend, you have other people who are friends of yours, right?

A. Yes, sir.

Q. Your friendship with Judge Nixon had gone back to an early meeting when you were both lawyers together?

A. Before he went on the bench.

Q. Excuse me?

A. Before he went on the bench.

Q. You're 53 as you say, judge is a few years older than you are?

A. Two or three I think.

Q. I take it, went back to an incident early on when the judge in the course of some case helped you out?

A. Helped me out in a case in Gulfport, helped me, I tried to pay him, he wouldn't let me.

Q. I couldn't understand you, I'm --

A. He helped me out in a case. I tried to pay him, out of the goodness of his heart he would not let me pay him. I was just starting out, it meant the world to me. I've always been very indebted and grateful to him. Still am.

Q. Just so we understand, you were both practicing lawyers at the time, right?

A. Yes.

Q. Is it fair to say that so far as you've known him, in the community, in the Southern District of Mississippi he has a reputation as being a truly fine jurist, is that true?

A. That's true.

Q. And a very honorable man, is that accurate?

A. As far as I know, yes, sir.

Q. Let me understand something. You're sitting here having been the district attorney of Forest County for four years?

A. Yes, sir.

Q. Having practiced law for I guess it's twenty years now, right, over that, thirty years?

A. Thirty, right.

Q. Thirty years. And you find yourself in what is not only an embarrassing situation, but one in which your whole career is at stake, right?

A. Well, yes.

Q. That's a fair statement, is it not, Bud?

A. That's correct.

Q. Look, one thing, we're both attorneys. If I ask you anything that is confusing or if you think it's misleading, I want you to tell me that, okay?

A. All right.

Q. If you don't understand it I'll rephrase it.

A. Okay.

Q. Much, as I understand it, you view the trouble, or you in some way attribute the trouble you're in to what did you in an effort to help your friend, Judge Nixon, is that accurate?

A. Yes, sir, that's my feeling.

Q. Didn't you bring any of this trouble on yourself?

A. Yes, sir, I could have just come in just told it and ignored what I thought that my friend was wanting me to do.

Q. Let me ask you a little bit, we just looked at the indictment in the case, okay?

A. Yes, sir.

Q. I understand that early on, before you got into the case, before you got into the Drew Fairchild case, apparently, perfectly properly, Bill Porter came to you saying he represented Drew, correct? I'm talking about right after the drug bust?

A. Right, yes, sir.

Q. Nothing improper in that, right?

A. No, sir.

Q. He tells you about the problem and he brings Drew to see you, correct?

A. That's true.

Q. You give him some advice, not necessarily, I mean both as district attorney and as a private attorney, look, the best thing you could do is get up to Jackson as fast as you can, see George Phillips and cut some deal. I think that's what you can do in this case from the way I see the facts, is that right?

A. That's correct.

Q. Did you view that in any way as being anything improper on your part?

A. No, sir.

Q. Both as district attorney, and as a friend of Porter's giving some advice, perfectly proper, right?

A. True.

Q. And you made a call to George Phillips?

A. I did.

Q. George is a friend of yours, is a public official, assume at no time would you try to overreach George, right?

A. Never.

Q. You made a call, simply told him what was going on, you were sending these people up there, right?

A. Right.

Q. George is from Hattiesburg?

A. Right.

Q. He's now holding the position, headquartered in Jackson, right?

A. That's correct.

Q. He knew Bill Porter, didn't he?

A. Sure.

Q. He most likely knew Drew Fairchild, didn't know him well?

A. Everybody knew him.

Q. You told him what was going on and sent them on up there, correct?

A. Correct.

Q. Then you go, that event, let's look at that event. Purely innocent event on your part, right?

A. Yes, sir.

Q. That's in about early November of 1980, right?

A. Right.

Q. Four years later in July of 1984 you go to the grand jury, right?

A. Right.

Q. July 84?

A. Right.

Q. And they ask you questions about that event, am I right?

A. That's correct.

Q. And you lied to them?

A. How did I lie to them?

Q. You got indicted, you told them you didn't have -- you want me to read the indictment to you?

A. Sure.

Q. Okay. Did you have a conversation with Drew Fairchild -- this is relating to his case. Did you have a conversation with Drew Fairchild soon after the bust about this subject? Answer -- what was your answer?

A. Told them no.

Q. You said never.

A. Okay, never, whatever.

Q. Okay. Think back between the bust and the time you indicted him. "Answer: No, sir. And you then go on to tell them the only time you ever every saw him was after you indicted him on August 27, 31, quote, that's the only time I've ever seen him, right?

A. Right.

Q. That was a lie, wasn't it?

A. No, sir.

Q. You forgot?

A. All I can remember, if you go back, Mr. Pawer, and read my next Grand Jury appearance, you will see where I tell them in there that he did come up there with Bill Porter.

Q. You told --

A. They asked me again before I was ever indicted and I told them because I found it in the logbook.

Q. On July 20?

A. All right.

Q. Let's just understand something?

A. All right.

Q. On July 20, you told them that, under oath with -- Next time you go is in September. Right?

A. Right. When I was telling them --

Q. Just listen to my question, sir. Okay?

A. All right.

Q. I'll give you all the time you need to answer.

A. All right.

Q. You were telling us now the answers were exactly as I read them but they weren't an intentional lie, you just didn't recall it at the time?

A. I can remember one time and one time only talking to it at that time.

Q. At that time?

A. That's correct.

Q. You then found out for some reason, you went back and found some records, so, yeah, you really had seen them earlier?

A. The time I was up there with Bill and I told them that.

Q. That was in September. Two months go by?

A. Okay.

Q. Those are two different Grand Jury appearances. Okay?

A. Same appearance because it was continued from the first one to the second.

Q. You were before the Grand Jury four times, Mr. Holmes. Okay?

A. Okay.

Q. Let's understand something.

A. Okay.

Q. Throughout this Grand Jury, throughout the investigation -- I'm not saying it's a fault on your part, but whatever was going on, you were calling people, finding out, talking, you were talking to everybody you could to find out what was going on. Right?

A. That's correct.

Q. I mean, that's part of your nature. Right?

A. Right.

Q. I mean, it's -- You were calling, you reach for a phone before you reach for, I mean, your glasses in the morning? You called a lot of people, you used the telephone very frequently. Right?

A. Yes.

Q. You drop in on people, very frequently, to find out whatever it is you want to know. Correct?

A. I think that would be accurate.

Q. I mean, I have personality traits, you have some and I'm describing some. Right?

A. Yes, sir.

Q. It's fair to say when you want to do something, you just do it, I don't want to say without much thought, but I mean you act almost as quickly as, almost faster than you think. Fair statement?

A. I think that's an accurate statement.

Q. In July of 1920, July 19, 20 of 1984, you told, they ask you a series of questions, and it's your testimony that you had no recollection at that point of what you have here about Porter and Fairchild coming to your office in November of 1980. Correct?

A. I really remember Bill. I didn't remember Drew being with him.

Q. And the phone call to Phillips as well?

A. Oh, I knew about the phone --

Q. Did you --

A. I never said I didn't make the phone call.

Q. I'm not saying that.

A. I remember that but whatever you --

Q. You're telling us now that that was inadvertent. Right?

A. Sure.

Q. But surely whether it's inadvertent or not, you were not doing any of that testifying on behalf of Judge Nixon, were you?

A. Do what now?

Q. Your testimony with respect to that incident, you weren't protecting Judge Nixon there, were you?

A. No, sir.

Q. And you got indicted for that testimony?

A. That's correct.

Q. I forget. Your potential sentence was what?

A. Pardon?

Q. How many years if you got convicted on that charge?

A. Five years.

Q. Five years?

A. That's correct.

Q. And as you referred to it as the joint?

A. That's correct.

Q. That's no halfway house?

A. I understand.

Q. It's the slammer. Right?

A. Detention.

Q. Those big doors go right on you. Correct?

A. That's correct.

Q. Okay. You were then also, as I understand it, you testify the next time, the continuation on September 5?

A. All right.

Q. Right? Some questions were asked, Mr. Weingarten had a problem -- I shouldn't say a problem but they were trying to figure out how the case got from the federal level to the state?

A. Right.

Q. They were having serious problems about the transfer of the case. Right?

A. Right.

Q. They're going up one side and down the other and you're trying to respond to them. Right?

A. Right.

Q. George Phillips has testified, you read his Grand Jury as well. Correct?

A. No, sir, never read his Grand Jury.

Q. You know full well it's Phillips' position -- I don't think it's contrary to yours -- you made a phone call to him?

A. That's correct.

Q. And basically asked about the case and asked if you could take it over?

A. That's correct.

Q. Nevertheless, you go to the Grand Jury on September 5 and you tell them -- Let me not, I don't want to be cavalier about it, let's look at the record.

A. Okay.

Q. Question, why -- This is the question by Mr. Weingarten, second appearance before the Grand Jury, why, in a succinct way, but why did you seek the case from the feds when you did? Answer, why did I quote seek it? Question, yes. Answer, I never did seek it. Is that true?

A. That's true.

Q. They said you lied there?

A. That's right.

Q. They indicted you?

A. They indicted me.

Q. They indicted you for it, you say you didn't seek it. Are you telling this Grand Jury, you didn't seek that case?

A. Why should I seek it? I was the district attorney at the time where it happened. I had concurrent jurisdiction, just like the federal court did. I couldn't take it from them, they couldn't take it from me. We cooperated with each other. It was my right to present it without even asking them. How could I seek something that was mine to begin with?

Q. At least Mr. Weingarten disagreed with you?

A. Apparently so.

Q. Apparently so.

A. Out of the five indictments, I felt like I only had one I was concerned with.

Q. We're just coming to it.

A. Excuse me.

Q. In the same Grand Jury: Did you ever reach out specifically and want that case? And you said no. No, sir?

A. That's right. George Phillips said he'd like to keep it. I said fine.

Q. He said that?

A. If he had.

Q. But he didn't?

A. He didn't. He said why don't you go ahead and keep it.

Q. I thought you told us yesterday -- It's fair to say you made the call?

A. I did.

Q. In order to fined out and get the case down to you?

A. Find out what the status of the case was with Bill Porter, concerning about his fee, and I called George and asked him the status of the case.

Q. So if George Phillips had testified in this court that you asked him if you could handle the rest of that case, he'd be lying to you?

A. Not necessarily. That might be his recollection on the thing.

Q. You just have a different recollection?

A. Mr. Fawer, I can't remember because it wasn't that big of a deal. We talked about cases all the time and his memory might be now that I tried to get it from him. I didn't feel like I tried. I asked him, we discussed it, he said I never have indicted Watkins. He said if Drew hadn't cooperated and, as I recall it, he said you want to take the case, go ahead. I might have asked him for it, but it was not -- it was no big deal, one way or the other on it.

Q. Are you finished?

A. Yes, sir.

Q. You were indicted on that point. Right?

A. I was indicted, yes, sir.

Q. Which you call no big deal, you could have gone to the slammer for a second five years?

A. That's correct.

Q. That's ten. Right?

A. Right.

Q. Fair to say your testimony in no way, in that connection you were doing anything to help Judge Nixon, had nothing to do with him?

A. Right. No way.

Q. So you had a possible ten years. Whether you were innocent or guilty, is it fair to say you brought those charges on yourself, unrelated to anything to do with Judge Nixon? Correct?

A. That would be accurate.

Q. Okay. And that's two counts of that indictment. Right?

A. Right.

Q. I mean, really, we don't have to go -- Ten years is big time?

A. Right.

Q. Three years is big time. Am I right?

A. One day is.

Q. One day?

A. One day is big time.

Q. But in fact there was at least one more charge of your trying to obstruct the Grand Jury. Right? That was the first charge in the indictment?

A. Hm-hm.

Q. And one of the questions that was asked to you, one of the subjects of the obstruction is your misrepresenting ever discussing the drug case involving Drew Fairchild with Wiley Fairchild. Right?

A. I don't remember. Yes, sir.

Q. Want to see it?

A. Yeah, let me see it.

Q. Sure. 4 A?

A. 4 A.

Q. (Delivers document to witness.)

A. All right.

Q. Well, I don't think Reid Weingarten brought it out, I may be wrong, I didn't hear him do it before, in December of 1983, having nothing to do, just before you went out of office. Right?

A. Right.

Q. Nothing to do with Judge Nixon, you asked another man to come with you to Wiley Fairchild's office one morning. Right?

A. Yes, in December of 83. Right.

Q. That other man was Judge Dickey McKenzie?

A. That's right.

Q. You went there in an effort to explain to Wiley why you were willing to go ahead with the sentencing before you went out of office and since that Porter was now dead, you were willing to go through with it now so you could live up to commitment before you went out of office?

A. That's correct.

Q. You were doing it in front of the judge?

A. That's right.

Q. So is it fair to say the agreement, plea agreement you had made with Drew, with Wiley -- excuse me with Bill Porter and Drew with a handshake -- That's how you do it Mississippi?

A. That's right.

Q. That's why you had that conversation with Wiley. Right?

A. That's right.

Q. This conversation had nothing to do with the judge. Right?

A. No, sir.

Q. Yet, clearly it was a conversation about the case with

Wiley. Right?

A. That's right.

Q. Yet, you for some reason in response to questions in the Grand Jury about discussions with Wiley Fairchild you said you never had such discussions about the case. Right?

A. No, sir, I told the Grand Jury about meeting with Judge McKenzie.

Q. Excuse me?

A. Meaning --

Q. Excuse me. In July, when you were asked whether you had ever met with, discussed the case, did you tell them about that?

A. Yes, sir, they knew it.

Q. Subsequently?

A. Well, they knew about it. I talked to them. The first time they interviewed me I told them about going out there with Dickey McKenzie.

Q. But that, the contact with Wiley Fairchild about the case was one of the subjects of your obstruction count in the indictment. Right?

A. I can't help that but they knew about my meeting with Judge McKenzie out there, they even had Judge McKenzie out there, but I don't want the jury to think I withheld that.

Q. I'm not suggesting you did.

A. I thought you were.

Q. I'm suggesting facts as alleged in the indictment. Okay? There were some other charges, I have to no desire to go into that charge. The obstruction charge, included as well, you're going around and tailoring, finding out what others were saying to the Grand Jury so you could tailor your testimony to it. Right?

A. That's what they charged me with.

Q. That's what they charged you with?

MR. FAWER: May I have the plea agreement -- Excuse me, the information. What was the last document?

MR. WEINGARTEN: 22.

MR. FAWER: I may be in error.

BY MR. FAWER:

Q. I may be in error, but you correct me, I have a feeling I'm not. That you not only got charged with that, you pled guilty to it?

A. I pled. Go ahead and read exactly what I pled guilty.

Q. In the information, quote -- The information is what you pled guilty to?

A. Whatever it is.

Q. The deal you cut ends up in this information. Right?

A. Right.

Q. The lesser included offense. Right?

A. Right.

Q. So the jury understands, the indictment which I have been reading from had a bunch of, five counts altogether. Right?

A. Right.

Q. I've dealt with three of them. Right?

A. Right.

Q. Two perjury and the obstruction of the Grand Jury. Right?

A. Right.

Q. Five times five is easy, 25 potential years but let's just say an even 15. You get to a point where the number of years don't count. Right?

A. Yeah.

Q. Dead is dead?

A. Right.

Q. But you pled to this lesser included offense and what this is was basically taking the five counts in the indictment, throwing out the last four, the four perjury counts, and turning the first obstruction count into this contempt count, the lesser included offense that you pled guilty to. Right?

A. I'll be frank --

Q. Do you want to compare count one of the indictment?

A. Whatever is in there is in there, right.

Q. Let me read it to you.

A. Okay.

Q. You plead to, you did commit acts of misconduct so near to the Grand Jury and to the court as to obstruct the administrion of justice. In this regard the defendant Paul Bud Holmes, A, inquired of others whether they had discussed the telephone call with others so he was able to tailor his own Grand Jury testimony. close quote. That is right?

A. That's right, I talked to Carroll Ingram.

Q. What you were charged with was tailoring your testimony. Right? And you pled guilty to tailoring your testimony. Correct?

A. That's what I pled guilty to, yes, sir.

Q. I take it you knew as a prosecutor and knew it then and do know now, what tailoring your testimony is all about. Right? You understand the term, it's not a just a needle and thread, it's a term of art. Is that correct?

A. That's correct.

Q. It's patterning your testimony in a way to be self-serving. Is that correct?

A. That would be correct.

Q. In any event, coming back to your indictment, there were, I think as you pointed out, numerous instances where the government's allegations against you had absolutely nothing to do with Judge Nixon. Right?

A. That's correct.

Q. So you have, you're facing some 15 years, plus, if the government can convince the jury that you're guilty?

A. Right.

Q. Right? That does concern you some?

A. Sure.

Q. Okay. And, as you pointed out, if in fact those were lies, if they were, they were sort of needless lies because what was there to hide?

A. Nothing.

Q. Am I right?

A. That's correct.

Q. I mean as far as you're concerned, really, as a practical matter, there's nothing? You don't see where there's anything to hide in this case. That is right?

A. That's true.

Q. Fine. It was a fallacy, the bottom line was there never was any influence really exerted, was there?

A. Nobody drew a gun on me or anything.

Q. Forget the guns.

A. Okay.

Q. Were you corrupted in office?

A. No, sir.

Q. Okay.

A. Never was.

Q. And if you had been somewhat more candid with the Grand Jury -- I think you have spent enough sleepless nights -- you realize you wouldn't be in the position you are in?

A. That's right.

Q. It's a little bit the result of your own personality. Fair statement?

A. I would think so.

Q. I am not here to make personal attacks on you. Okay?

A. Okay.

Q. I am here to represent Judge Nixon.

A. I wouldn't respect you if you did.

Q. Okay. But is it also fair to say that you have on occasion even -- Well, let me put it another way, you were charged with perjury, you have in a sense admitted perjury in certain aspects of your conduct. Correct?

A. No, sir, I've never -- Well, I guess, technical wording in there that it is perjurious, yes.

Q. You apologized to the Grand Jury about it?

A. I did, yes, sir. You're correct.

Q. In all candor you have spent years bragging about the fact that you're a notorious liar, have you not? Seriously, couldn't we bring 20 people into this courtroom who would say that you have said to them, you know you can't believe anything I say?

A. I don't know of anybody.

Q. Have you ever said that to anyone?

A. I've said --

Q. On this witness stand --

A. Jokingly plenty of times.

Q. You have said, what you're telling us now it's jokingly. You have said to people about your own credibility that you're not to be believed. Have you said that to people?

A. Mr. Fawer, I don't think ever an occasion where I ever said it in seriousness.

Q. You know there were on many occasions you said it jokingly, but you can't tell us when it was ever said seriously?

A. I can't.

Q. So the people who would come in to whom you have said it would only be a question of interpreting whether you were joking or whether you were serious on these occasions, correct?

A. I would have to think, people can look and see on the circumstances what we were talking about whether I was joking and kidding.

Q. In any event, you were to say the least, somewhat cavalier with the truth in the grand jury?

A. In one area, yes, sir.

Q. I see. At least in some other areas, to give you the benefit of the doubt, you had a failure of recollection?

A. I think I cleared it up.

Q. I'm talking about in July -- two months after a grand jury appearance you cleared it up, but you at very best, looking at it from your position, when you told them you never spoke to Drew Fairchild after the drug bust, what you believe is you had a failure of recollection, otherwise you lied? You haven't got any other alternative, Bud.

A. Mr. Fawer, until I read Drew's testimony did I ever really come to the realization he was probably with Bill Porter. I remember having the conversation with Bill, I remember calling George Phillips with Bill, and based upon what he said in his testimony, I got to assume he was there.

Q. I thought --

A. I do not remember specifically. You got to remember, you see maybe forty to fifty people a day over there. I can't sit here and say he did or did not come. I remember the conversation, I told them about Bill, Drew -- if Drew was with him, okay, if he wasn't with him okay.

Q. Did you look, did you have the 1980 diary?

A. Later on, Jimmie Pace pointed out where he was in there. At that time, if you go back and read my grand jury testimony, Mr. Fawer, I told them he was up there one time and I offered the government the diary itself, you know, where it was in there, you know, he was in there. And I did not know it was in there but the one time I remember him coming on up there.

Q. How did you get to checking about the one time and not see the second time?

A. First time, after he was indicted, called me up and wanted to come by and see me. Turned it over to Katie Matison, told him I was not going to talk to Drew by myself, told him to get his lawyer, he would not bring a lawyer, wanted to come see me by himself. I just didn't like the way it sounded.

Q. This is on August 28th of 81?

A. After he was indicted.

Q. That's what your diary says.

A. Whatever day. I told him, told him, Mr. Fairchild, if you want to see me, bring your lawyer. He said no, I'm a private citizen, you're the district attorney, I have a right to see you by myself. I told him, well, you're right, okay. Come on up here. I got Katy, came in there, told me he wanted to see me by myself, no, Ms. Matison's going to be handling the case. She sat right there. Drew came in, sat down, talked a few minutes and he left. That was the only time I remembered him being there. Now that's the only time I remember him being there.

Then later, at the grand jury appearance the record will show I offered them the book, I said here it is, it's in here. You all take it and look in there. His name was in there. If I was trying to hide something, certainly wouldn't be offering the book where his name was in there. At a later date my secretary, Jimmie Pace, found it, said look, looks like

Drew was up here another time. I didn't know it.
Q. What book did you offer the government?
A. Whichever appointment book, was it 82?
Q. Obviously.
A. Whichever one, August 28th of what year, 81 or 82?
Q. You don't remember?
A. Whatever, the indictment, I guess it would be 81, August of 81.
Q. You need to book to sort of, are you sure it's 81?
A. Whatever year he was indicted.
Q. Well, I mean as you sit here right now --
A. I don't have any independent recollection.
Q. You can't date when you indicted him?
A. I want to say it was --
Q. You sure it's 81?
A. I'm not going to swear on it, no, sir. Could have been 82. Probably 81 I would think.
Q. Really need to see some other records to be sure?
A. I need the indictment date.
Q. Well, it was -- -
A. Was it 81?
Q. You're not really terrific on dates, are you?
A. No, sir. You handle fifteen hundred cases a year over there. What dates -- this thing's been going on, the drug bust was 80, this is 86. I promise you the years are going to be

running together.

Q. Come back to my question, the bottom line is, you had seen him apparently right after the drug bust. Obviously it wouldn't have been in the 81 book you were handing the government because it would have been a year earlier?

A. He could have come in, what I'm saying, he could have.

Q. With the --

A. Let me say this. I asked the secretary -- you're making a point of this, let me explain it. She writes down people's names that come in, whether or not they see me or not. Bill Porter could have come up there and come back up there and seen me; he could have been sitting out front. I have no independent recollection of Drew Fairchild coming in that day.

Q. Okay.

A. It's -- I mean, if he did he did, it's final.

Q. So we go by it, in any event, I gather it upset you because it's one of the five year counts?

A. I thought it was a very unfair indictment.

Q. It was there.

A. It was there, I thought it was extremely unfair.

Q. Let's see if we can move on a little bit. You had this charge, you were indicted in March of 197 -- March of 1985, right?

A. Yes, I guess, right.

Q. Wiley Fairchild had already been indicted the previous

September and had pled guilty in November, right?

A. Whatever, yes, sir.

Q. He as you knew had a plea agreement because you were aware of all that from the material made available to you and your attorneys getting ready for trial, right?

A. Yes, sir.

Q. And you knew what he was going to say, you knew what his deal was with the government, am I correct?

A. I'm sure I did. I don't recall it, but I'm sure.

Q. You know you read over the plea agreement, you read over his grand jury testimony, right?

A. I read the grand jury testimony. Whether I saw his plea agreement, I know basically what it was, one count.

Q. One count gratuity, plead guilty to selling things under value, and the government will go in and recommend no jail time, right?

A. No, sir, I don't think I ever saw the no jail time.

Q. Do you remember, you didn't know that was what the recommendation was in the plea agreement?

A. I don't think I saw the plea agreement.

Q. Did your attorneys ever tell it to you?

A. They probably did, be frank, I probably could have seen it at that time, I was such --

Q. There was a lot of publicity about this investigation, was there not?

A. Oh, yeah, worlds of it.

Q. You knew that of course by January and February that noose was tightening a bit, because you knew Carroll was going, put it to him when you spoke to him in I guess it was February, you had, he in effect by telling you about the conversations with the government had gotten you indicted for perjury, right?

A. Right.

Q. That's what you told him, right?

A. Told him, I said you're going to try to make me, or that will make me out a perjurer.

Q. Sure enough in March you get indicted for perjury, right?

A. Right.

Q. That's the indictment we've been talking about with these stacked five year sentences?

A. Right.

Q. You knew one other fact that was just the most obvious thing in the world to you at that point in time. Tell me if I'm correct. You knew who the government really wanted in this investigation, right?

A. Yes.

Q. And so the jury understands, and I don't suggest, tell the jury who it is that the government wanted in this case?

A. You want me to tell them?

Q. Who did they want? Who was the target in your mind?

A. My mind of course it was Judge Nixon.

Q. Okay. Were you ever told that if you knew, if you were smart, if you were savvy, that you knew what they wanted and that you could walk away without being indicted if you could give them the judge?

A. They didn't say give them the judge, no, sir. They offered not to indict me, that was --

Q. You tell the jury what you understood they told you?

A. All right, sir. Got a call from Mr. Weingarten in Washington, told me he would be the bearer of bad tidings, but he had been authorized to present me for indictment. I asked him for what, he said well, to be frank with you, we don't feel like you've been perfectly candid with the grand jury. I said well, anyway I can avoid the indictment? I didn't want to be indicted.

He said well, you'll have to act fast. I'll be down there Wednesday, I believe this was on Monday. Be in Jackson like next day, be in Hattiesburg on Wednesday, and if you want to avoid the indictment, you know, you're going to have to act fast, I'll see you there.

Q. Did you know what he meant by act fast?

A. I assumed, because they had never told me, never told me I was a target, subject, or anything, you know.

Q. Did you know what they meant, did you know what he meant when he was talking to you?

A. Assumed what he was -- give them something that would indict Judge Nixon, assumed.

Q. Let's you and I -- I'm a former prosecutor, so are you. Let's talk the language of prosecutors, okay. Let the jury in on the language, okay?

A. Okay.

Q. Tell them?

A. What they wanted, give them Judge Nixon.

Q. Give them Judge Nixon you'd walk, right?

A. You wouldn't be indicted if you give them Judge Nixon.

Q. That's what they told you, who was facing, you knew, says perjury charge, you knew it meant at least five years, that's what the potential charge would be, correct?

A. I assume that's what it was going to be. He did not tell me what it was or how many counts or anything else.

Q. I understand. It had to be at least one count?

A. Uh-huh (yes).

Q. One count is five years, right?

A. Right.

Q. If it was multiple counts, it was, we start moving into the big numbers, right?

A. Right.

Q. Okay. And you then had to make a decision what you were going to do, right?

A. Right.

Q. And you didn't, you did not go and talk to him at that time, Reid Weingarten?

A. Yes, I met him on Wednesday.

Q. You met him?

A. Met him, Maurice Dantin met with him and Ms. Little.

Q. I take it though at that time, have you ever seen a 302 of that meeting? Do you know what an FBI 302 is?

A. No.

Q. The memorandum of interview.

A. No.

Q. No FBI agents?

A. Just the two United States Attorneys.

Q. And to make it simple, you did not give them what they wanted because you ended up getting indicted, right?

A. Well, that's obvious.

Q. That's obvious, right?

A. Right.

Q. So in late March, shortly before March 29th, you couldn't satisfy the gentleman, so we have a five count indictment, right? I mean he was serious about what he was saying. He had the authority from Washington to indict you five times, five counts, right?

A. I didn't know how many counts it was until they --

Q. March 29th you knew?

A. The day they indicted me, I don't know whether it was one, five, or fifty.

Q. I understand. But on March 29th, you knew his threat was -- did you view it as a threat?

A. Pardon?

Q. Did you view it as a threat? If you don't give us the judge you're going to be indicted?

A. They didn't say it in those words.

Q. I understand it. In the language you and I are accustomed to, was that the threat that was made?

A. What I interpreted was, give us Judge Nixon or you're going to be indicted.

Q. Give us Judge Nixon or you will be indicted, right?

A. That's correct.

Q. The other point is, don't, you know, if you give us Judge Nixon, then you can walk away, correct?

A. I assume that's what --

Q. Okay.

A. -- would have been the -- It never got to that point.

Q. I don't want to put words in your mouth.

A. I understand.

Q. I know it's painful but you're the one that's been through it. Right?

A. Yeah, I been through it. Still going through it.

Q. The only difference between what your position is then and March 29 were ten minutes after they filed the indictment is they had simply planted the hook in your neck by filing the indictment. Right?

A. (No response.)

Q. You now faced a five count felony indictment. Right?

A. They -- Oh, yes, at this point.

Q. Okay.

A. Let me say this, they never came out -- I want to be fair to the government on it. They never came out and actually made me a formal offer. It was give us this and you can probably avoid the indictment.

Q. It's never in writing when it's that kind of a threat, --

A. No, sir.

Q. -- is it?

A. No, sir.

Q. You don't put those kind of threats in writing, do you?

A. No, sir.

Q. Those are the kind that said so that you know what they're talking about and they know what they're talking about?

A. Yes, sir.

Q. Right?

A. Right.

Q. As you sit on the stand under oath, you knew precisely what they were saying, you, Bud Holmes, could walk away without any jail time at that point, if you gave them the Judge. Bottom line. Right?

A. Right.

Q. But you didn't. You chose to let them indict you. Right?

A. Right.

Q. You realized if you called their bluff, down came the five count indictment. Right?

A. It wasn't that. I didn't -- To be frank, at that time and I'm still saying right now, I did not know anything that I thought that I could actually give them on the judge because they knew about the phone call, they knew about everything else, I had basically recanted in the Grand Jury room and I didn't have anything. I felt like they let me enter into this plea after we had gotten the jury and I thought we had a real strong case and I thought there was a good chance I could get total acquittal and I think it was merely --

Q. You will never know, will you?

A. You never know.

Q. No. You will never know?

A. I'll never know.

Q. You never had the chance of 12 honest citizens to make the judgment call on you?

A. That's correct.

Q. Okay.

A. When they offered something less than a felony to me --

Q. You bought it?

A. -- I bought it. I sure did.

Q. In this indictment --

A. I didn't give them anything more than I would be willing to give them before they indicted me.

Q. Let me ask you --

THE COURT: Let's take a short recess.

(Recess.)

MR. FAWER: May I continue, Your Honor?

THE COURT: Proceed.

BY MR. FAWER:

Q. We had gotten to a point where you had been indicted by the federal government?

A. Yes, sir.

Q. On March 29?

A. Yes, sir.

Q. From your perspective, in fact, for the most part, you viewed yourself as being innocent of the bulk of the charges?

A. Right.

Q. Felt that they were being used merely as a means of having some leverage on you?

A. Ah, no, sir. I really thought that they put all those indictments in there, trying to get it into the press where they could write up a lot of things to try to influence the community, all these things been in there about the wild accusations in there that would make it look real, real bad. I thought they were media indictments is what I really thought. I thought they had one count in there with some substance in there.

Q. All right.

A. The rest of them were totally baseless.

Q. Sometime between March 29 and just about the time you were going to go to trial -- The trial was going to be held here?

A. Yes, sir.

Q. Just prior to that you negotiated through your attorneys this plea agreement?

A. No, sir.

Q. Right?

A. No, sir. They picked the jury.

Q. That's what I said. On the eve of trial, they picked the jury --

A. We picked the jury I believe on like a Monday and then, oh, before we started putting, before the government put on its first witness, the offer was made of something less than a felony, because I always maintained the position that I was under no condition going to plead to a felony, under no condition.

Q. Let's understand what you did do.

A. All right, sir.

Q. First of all I gather there were some negotiations between your attorneys and the government concerning this?

A. Did not know this until the second day of trial.

Q. But you now know the plea agreement did not come down out of thin air, it was negotiated and drafted and worked out between your attorneys and the government?

A. That was the morning of the second day. Yes, sir.

Q. That it was final, that it came to be finalized but it came as a result of discussions between the two parties. Right?

A. Mr. Pawer, it's my understanding that nothing was worked out until the second day.

Q. I understand that. But it didn't just -- I mean it wasn't a case of them handing you this document?

A. Oh, no, sir.

Q. It was worked out between the parties. You understand what I mean?

A. Yes, sir. What I'm trying to say is I don't think that any type of serious negotiations took place until the second day of the trial.

Q. I understand.

A. Because when I left here on Monday, I thought we were up for bat the next morning and you could knock me over with a feather when they came in and said the government is willing to reduce the charges to something less than a felony.

Q. On certain conditions?

A. Well, on the plea bargain.

Q. Plea bargain is a word. Right?

A. Right.

Q. You got to take this plea agreement or plea bargain and flesh it out with what's underneath it?

A. Right.

Q. What's underneath it is, we'll agree to the terms of the plea bargain, namely let you plead to what? Is it contempt?

A. Contempt of court.

Q. Instead of a potential 25 years, as there was in the indictment, they are going to agree that the Judge give you one year, that would be fine?

A. Well, that's what it said, yes, sir.

Q. That's what you signed your name to?

A. That's correct. That's correct.

Q. Okay. And while it doesn't say it here, you agree to, in effect, give information or testify against the Judge?

A. It did not spell out Judge Nixon.

Q. No, it did not. But you knew and I know and you know as you're sitting there now --

A. Main thing they wanted to know, as I recall they wanted to know about the telephone call.

Q You knew, as you already told us, the name of the game was that they offered you, before indicting you, is give us the Judge and you don't even get indicted?

A. Right.

Q. After they already indicted you, they said, the ante is up a little bit, give us the Judge, and you get a maximum of one year sentence?

A. No, sir, not exactly that, Mr. Fawer. Let me see if I can explain this. They knew about the telephone call.

Q. We all know that.

A. I didn't give them anything they didn't already know about beforehand.

Q. What we are going to come to is the way you gave it to them. All right?

A. Any way you want to.

Q. Fine.

A. The point is I didn't give them any more information after this than they knew beforehand. I would be willing to tell them this before we ever started picking the jury.

Q. They knew since November of the existence of the phone call. Right?

A. I don't know when. Whenever Carroll Ingram told them.

Q. Okay.

A. And then Wiley told them.

Q. It was before that. You knew that?

A. Yes, sir, that would have been whenever Mr. Fairchild and whenever Carroll --

Q. November of 84?

A. Whenever it was, yes, sir.

Q. Okay. So nobody's disputing the existence of the phone call. Right?

A. No, sir.

Q. In any event, you're going to give certain evidence. Right? As part of the plea agreement, you're going to give testimony. Right?

A. That's right.

Q. And they make the decision -- Excuse me, they're not going to charge you for any other crimes. Right?

A. Well, you know, perjury or anything.

Q. Sure.

A. But they know about that's in the agreement.

Q. Except they're going to make the decision whether you're telling the truth or not. Right?

A. Well, I assume.

Q. They're going to decide what they, what is truthful according to them, that's how we are going to define perjury.

Right?

A. Well, that would be the way it would be now in the terms of the agreement.

Q. Okay. The agreement went a step further and they had the right, while they were debriefing you or putting you before the Grand Jury, to test your credibility by giving you a polygraph?

A. That's correct.

Q. Right?

A. That's correct.

Q. Which is, so the jury knows it, that's a lie detector test?

A. Lie detector.

Q. Is it not a fact you did make the agreement?

A. Right.

Q. The trial ended?

A. Right.

Q. You did give testimony?

A. (No response.)

Q. You went to the Grand Jury?

A. Right. Before the Grand Jury.

Q. This is June 18, I think they put you in the Grand Jury the same day?

A. Right.

MR. WEINGARTEN: Can we approach the bench, please?

MR. FAWER: I'm not going into it.

BY MR. FAWER:

Q. Is it fair to say that with respect to the subject matter of this case -- You understand me?

A. I understand.

Q. -- they never tested your credibility by giving you a polygraph test with respect to the matters you have testified to here?

A. To be frank, I don't remember the questions.

Q. I'll show it to you.

A. Pardon?

(Mr. Fawer and Mr. Weingarten confer.)

(AT SIDE BAR:)

MR. FAWER: The plea agreement, Your Honor, gives them the right to test him by polygraph. They did test him by polygraph on Petite Bois and another matter, I'm not suggesting otherwise, but they never questioned him on this case. Am I right?

MR. WEINGARTEN: That's right.

MR. FAWER: That's all I'm going to bring out and it's in the stipulation, so we don't get involved --

MR. WEINGARTEN: How did he respond?

MR. FAWER: He said he didn't remember the questions. All I'm wanting is the stipulation.

MR. WEINGARTEN: I'll write one up.

MR. FAWER: I want it now. Okay? Right now. All I'm going to say is it's stipulated at no time was Mr. Holmes subjected to a polygraph about the subject matter of this case.

MR. WEINGARTEN: That's fine. (IN OPEN COURT:)

MR. FAWER: Your Honor, if I might, it's been stipulated between the attorneys for the government and myself that it is agreed that at no time did the government ever give Mr. Holmes a polygraph about the subject matter of this proceeding in any way. Is that correct?

MR. WEINGARTEN: (Nods yes.)

BY MR. FAWER:

Q. You accept that stipulation?

A. If that's what it was. I don't even remember the question.

Q. So despite their right to give you a polygraph on it, they simply allowed you to go into the Grand Jury. Correct?

A. Right.

Q. Someone who, according to your own admission, had lied under oath on previous occasions. Correct?

A. Right, sir.

Q. And did nothing to test your veracity, your truthfulness by means of a polygraph. Correct?

A. Right.

Q. They just decided they liked what you said. Correct?

A. That's the way it worked out.

Q. Okay. and then you have a sentencing and I take it at the sentencing -- Let me withdraw that for a minute. You knew before you entered into this plea agreement, as did your attorneys, of course, the nature of the cooperation that Wiley Fairchild had given. Correct?

A. (No response.)

Q. You read his transcript?

A. I read his transcript, yes, sir.

Q. Okay.

A. I did not know to what extent it was. I did read his transcript.

Q. Okay. That was his testimony?

A. Right.

Q. You knew basically as your attorneys they were privy to the plea agreement he worked out, people that were representing you?

A. I assume they did, yes, sir.

Q. And plea agreements say you go testify. And then you're sentenced in the end of 1985. Right?

A. Yes, sir.

Q. Summer of 84?

Q. And you're sentenced just as the plea agreement set forth, one year was what you were sentenced to?

A. Right.

Q. Although at some point, just so we can tie it down, the sentence was both one year and a jail sentence -- excuse me, and a fine?

A. That's correct.

Q. And you believed that that was an illegal sentence or your attorneys believed that was an illegal sentence that that was not permitted under the law. It had to be one or the other?

A. That's correct.

Q. When you say one or the other, the lesser of the two?

A. Right. -- No, not necessarily one or the other. Whichever one I satisfied first.

Q. Whichever one you satisfied first.

A. (No response.)

Q. Let me see. What did you satisfy first?

A. Paid the $10,000.

Q. The same day that you were sentenced?

A. Yep.

Q. I mean, that check was down in the registry of the court in a New York minute?

A. Yes, sir.

Q. Your position basically is you're not supposed to serve a day. Right? You shouldn't have to?

A. That's my position but every time I turn around they change the law some way so.

Q. One of your problems you have is that the government is misrepresenting to the court how many counts there were in that bill of information. Right?

A. That's correct.

Q. When we say the government, Mr. Weingarten?

A. I assume he takes orders from somebody else. I don't know.

Q. But that's the situation you're in. Right?

A. Right.

Q. So hopefully from your perspective, you will never spend a day behind bars?

A. That's my hope, that's right.

Q. Clearly the max you could ever serve behind bars is one year. Correct?

A. Well, under the plea agreement that was what --

Q. Under the plea agreement, you know under Williams versus North Carolina you got a one year sentence, you can't get any more time, you can't get any more than one?

A. At this date, that's correct.

Q. Right. And that in effect you can never face the potential of the 25 years in jail as set forth in the original indictment?

A. Of course if the plea agreement had not been honored on either side, of course it could have been set aside.

Q. That's right.

A. Right.

Q. You delivered, they delivered?

A. Hm-hm.

Q. Correct?

A. Right.

Q. Let's talk about the delivery. As I -- By the way, is it fair to say on a number of occasions, you're aware of the fact I had sought to interview and your attorneys, I guess on your attorneys' advice, you declined to be interviewed by me in preparation for this trial?

A. If you could tell me a date and time you wanted to interview me Mr. Fawer.

Q. You're not aware on at least ten occasions I've asked to meet with you?

A. No, sir.

Q. Your attorneys never told you?

A. No.

Q. It is proper when someone is represented by an attorney --

A. In my --

Q. Excuse me, let me finish my question. -- when someone is represented by an attorney, it's my obligation to go through the attorney, not to go to the client around the attorney. Correct?

A. Oh, certainly.

Q. Your attorneys' names are Robert Drake?

A. Right.

Q. James Dukes?

A. Right.

Q. And Patrick Fanning?

A. That's correct.

Q. Are you aware I've had conversations where I asked to meet with you?

A. No.

Q. They never transmited that to you?

A. It was my understanding you were going to meet with me.

Q. That's that was my understanding too. To this minute I've never had an opportunity to sit down with you and interrogate you?

A. No, sir, we have never talked. We talked briefly, once, in court said --

Q. One minute?

A. Just hello, how you doing. That's about it.

Q. So the jury understands, I was in -- Your sentencing was in New Orleans?

A. That's correct.

Q. I practice in New Orleans?

A. Right.

Q. I was in court on another matter?

A. That's right.

Q. I was in another courtroom and I came into the courtroom for the sentence?

A. Right. We did not discuss this case at all.

Q. While the government has spoken to you on several occasions?

A. Right.

Q. I have had not had that opportunity?

A. That's right.

Q. And it's not your fault?

A. I say right now I apologize to you. I certainly thought I was going to be made available to be interviewed but I thought you would have as much time to talk me as the government.

Q. We'll do it now.

A. Okay.

Q. Fine. In any event let me ask you this: As I understand it, basically, aside from the initial -- Let's talk about the fact, going back to some of the background facts. As I understand it aside from making a perfectly proper call up to George Phillips to set up an appointment for Drew and Bill to go up there, Bill Porter, you had nothing to do with the case until the summer of 1981?

A. Yes.

Q. As far as you knew, in fact there had been nothing in the newspaper about Drew at all because he had never been arrested and there's never been an indictment on the federal level. Correct?

A. I don't recall. That's correct.

Q. What you did learn from Bill Porter is that he had worked out -- Well, you saw the memorandum of understanding?

A. That's right.

Q. Bill told you that as well?

A. That's right.

Q. Bill was I should say a good friend of yours?

A. Bill was a good friend of mine.

Q. You were in the plane with him and happened to be fortunate enough to not be killed, and you made an effort to save him at the time but unfortunately it didn't work out?

A. That's right.

Q. In any event we are still back in 1981. Bill would drop in your office fairly frequently, or you would run into him?

A. Several times a week.

Q. Just so we understand, nothing unusual, people who are friends of yours, acquaintances of yours, come into the office and their names might appear in that book. Right?

A. Right.

Q. You didn't know the book was being kept. Right?

A. I didn't know the book was there until after I got out of office.

Q. If somebody wanted to see you, since we know you aren't in private practice at this time, they come up to office. Right?

A. Sure.

A. Sure.

Q. The office isn't overly formal, right?

A. No.

Q. You ran a rather casual office, informal, let me put it that way?

A. Right.

Q. You say on Friday afternoons some people, friends coming in for drinks?

A. Right.

Q. How big a staff did you have at that time?

A. Two assistants.

Q. Katy Matison and Glenn White?

A. Glenn White, right.

Q. Glenn White is now the district attorney?

A. Right.

Q. Bill sort of was bemoaning the fact he hadn't been -- worked out this arrangement, it was a good deal, right? He had worked out a really nice satisfactory arrangement for someone like Drew?

A. Yes.

Q. From what you could see?

A. I initiated the conversation with him.

Q. Okay.

A. I mean I initiated the conversation with Bill because I was getting ready to present to it my grand jury just to let them know the drug bust happened, federal government was handling it, because we had had another bust similar, people had been inquiring about what whatever happened to the people.

Q. Just so we don't get -- you are you talking about the eighteen wheeler?

A. No, sir, this was one involving some people from Tennessee.

Q. Just so the jury understands, there had been some publicity about a totally unrelated case?

A. Two cases.

Q. By the way, what you were doing is presenting some information to the grand jury to assure the people that it was being handled on some level, even though it wasn't the state level?

A. That's correct.

Q. That was what you intended doing similarly on this case, rights?

A. That's right.

Q. You are an elected official?

A. Right.

Q. As an elected official, something goes wrong, somebody has a misperception in law enforcement, who takes the heat?

A. The elected official always does.

Q. You?

A. That's right.

Q. If it has to do with the district attorney's office?

A. Right.

Q. Having come off another case that got some heat --

A. Right.

Q. Didn't want any heat here?

A. Right.

Q. Didn't want -- wanted to tell the grand jury, present to them what had happened?

A. Right.

Q. You had no intention of doing any indicting or anything of that sort at that point?

A. At that time I was just -- no, sir.

Q. Okay. Basically just an informational type presentation?

A. That's right.

Q. And that's a perfectly legitimate function of a grand jury?

A. Sure.

Q. I take it, as far as you are concerned, while there is dual jurisdiction, the federal -- this was a case in which basically it started with a customs plane, the federal, interstate aspect, federal government was handling the whole thing?

A. That's correct.

Q. Okay. Okay. In any event, Bill comes in, you ask him -- tell us what you asked him?

A. I asked him whatever happened on the drug bust out there at the airport, you know, whatever happened. I thought they had that all worked out and were working undercover about it. Bill proceeded to tell me that he worked out this agreement you know for Drew, and that Drew never even paid him, made a number of trips to Jackson, so forth. He was just fussing about it.

Q. Okay. That was part of Bill's way?

A. That's right. He was griping.

Q. And did you say, hey, maybe I can help you collect your fee?

A. Probably, something about like that. You mean he never paid you? Yeah, just sitting there, you being an attorney, know this happens a lot of times, and you know, just normal kind of talk.

Q. Well, okay. He's this private attorney who represents a client, supposed to be protecting his interests, talking to you innocently enough, you then say something to him about maybe I can help you collect your fee?

A. Right.

Q. And you're going to do that by making a call to George Phillips?

A. Right.

Q. How were you going to help him collect his fee by calling George Phillips?

A. Whether I said it right that minute or later on, or not, Mr. Fawer, I don't really recall whether I said it right that minute. I know I called George for Bill and just asked Bill what the status of the case was.

Q. Well, I understand that. I'm having a little bit of a problem, because I sure -- if I'm a defense attorney, I sure don't want to be in a position of thinking that I could do anything to get my client indicted. I mean that would really bother me, okay?

A. Okay.

Q. So you're telling me as the highest elected law enforcement official in the state, you're talking to a private attorney?

A. Uh-huh (yes).

Q. You're going to use your office in some way to help him collect his fee, and I want to know how you were going to do that? I mean the call isn't going -- to get, I'm asking a second question, I just want to explain myself. Obviously to help him get his fee you got to send a message some place?

A. Right.

Q. You didn't expect by calling George Phillips for Phillips to bring a check to Porter?

A. No.

Q. There has got to be a message in that call; to send a message, you got to send a message to the person you want to receive it, right?

A. Right.

Q. Only one person I know needs to receive that message, maybe two. Drew, Drew don't have much money, Wiley does, right?

A. Right.

Q. Tell us how you were going to help him get his fee by making the call?

A. Mr. Fawer, it was not some concerted effort to help him, quote unquote, collect a fee. Bill was up there fussing about it, that's what brought it to my attention. The reason, the reason that I called was a two-fold purpose, like I tried to explain to you.

Q. I'm listening.

A. Find out about the status of the case from George on the one hand, and on the other hand I was going to relate to George about the situation and the fact that Bill never had even gotten paid, and I wanted to find out what the situation was up there.

Q. Why would George care about him not getting paid?

A. You live in a small community down here, these kind of things go on.

Q. Is it a case of you scratch my back, I'll scratch yours?

A. No. One of the most common things around the world in here in the practice is where one attorney will go, they will talk to a JP or justice of the peace, get people to continue cases because they hadn't collected their fee. Most common thing in the world is standing joke, whenever, they say have you been employed? No, I haven't been fully employed yet, meaning I haven't been paid. They will continue cases, these things happen all the time in the practice of law.

Q. I'm not, I'm hearing you, but I don't want to tell you I'm aware. You're telling me that judges will continue cases in order to guarantee that the lawyer gets his fee?

A. No, sir. No, sir, I didn't say that at all.

Q. Justices of the peace --

A. The prosecutors a lot of times will go in there and whenever they say are you ready to plead your man today, no, I haven't been fully employed, meaning by that I'm still waiting on my fee. A lot of times, I'm not ready to plead him yet, as you well know in criminal practice, which you generally handle higher type clients now, many many times in criminal practice, if you don't get your money, as you well know, up front, many times you don't collect it.

Q. Okay.

A. A lot of times they will hold out, you know, before they plea or work it out until they do it.

Q. Well, okay.

A. It's kind of that situation. It wasn't twisting his arm or doing anything to somebody to help him collect a fee.

Q. I understand. Here, of course, it was all -- Bill had made that classical error of doing that without getting the money up front?

A. I assume that's correct.

Q. Here you were going to do something for a friend to help him out, right?

A. Well, it wasn't the only thing, but that was a motivating thing for me to make the phone call. Whether Bill got his fee collected or not, let me say this, I was going to handle the case, after I talked to George. Bill got paid fine, if he didn't, fine.

Q. Start with you got to call George to get the case, right?

A. That's correct. No, no, not trying to get the case. Called George to find out the status of the case.

Q. George and you are a little bit at odds; George says you called and asked him for the case.

A. Okay. He can take a position. That's not my position on the thing.

Q. Okay. We don't want to get you at odds with an old friend. As I understand it, one way I guess to get the client's attention, one way of getting a message across, is to indict him, correct?

A. Present it, yes, sir.

Q. A little difference between presenting and indicting. Presenting you're just giving the grand jury some information. Indicting is the best message in the world, right?

A. The grand jury indicts.

Q. Mr. Holmes, why are you smiling? You and I both know what -- grand juries do what people like you as DA ask them and tell them to do, right?

A. Well, as a rule, that's correct.

Q. We're not going to spend a lot of time talking about that, are we?

A. Not unless you want to.

Q. I don't think we have to. I don't think they're naive enough to think otherwise.

A. All right.

Q. Okay. Best way to send a message is to at least threaten to have an indictment or to actually indict, right? That's a loud and clear message, right?

A. That's generally very loud and clear message.

Q. Government send you one of the loudest messages you ever received on March 29th?

A. Very loud, that is correct.

Q. Okay. So is it fair --

A. I already paid my attorney.

Q. Excuse me?

A. I had already paid my attorney.

Q. Unfortunately perhaps you did. Unfortunately for you. In any event, you were doing something to help Bill, and that's what really was the motivating factor in calling George Phillips?

A. I would say that was primarily the motivating cause.

Q. It was primarily to help Bill collect his money?

A. Well, I couldn't necessarily put it in degrees. That was a certain strong motivating thing.

Q. Primarily to help him collect his money?

A. Call it that.

Q. I'm calling it, because I got the best source in the world.

A. Yeah.

Q. You and the grand jury?

A. Correct.

Q. Right?

A. That's right.

Q. You're telling us that's your primary motive?

A. That's right.

Q. And therefore if that's your primary motive, then you're going to do something to accomplish your primary motive?

A. Well, like I said in the grand jury, going back to it, I planned on presenting the case anyway to the grand jury.

Q. Presenting is just telling the -- you could have handed them a piece of paper to tell them what happened?

A. If George Phillips said he still had the case and wanted to proceed with it and not fool with it, I would not have gone any further with it.

Q. Let's cut through. You called him, found out -- you knew at this point Drew hadn't been indicted?

A. I did not know he hadn't been indicted.

Q. I beg your pardon?

A. At the time I called George Phillips I did not know, because Bill Porter didn't.

Q. His lawyer didn't know his client hadn't been indicted?

A. Said he hadn't heard from him.

Q. If you don't hear, that's the best news there ever is, right? You hear when there is an indictment, right?

A. Well, generally.

Q. Bill Porter was his attorney of record, right?

A. Bill told me he didn't know what became of the case, quote unquote.

Q. Go ahead. Look, maybe I can help you with the fee, not with him there, you call George -- you call George, inquired of the status, found out that Drew had not been indicted, correct?

A. Right.

Q. As far as George knew he wasn't cooperating?

A. That's correct.

Q. You asked if you could handle the rest of the case?

A. I told him I was going to present it, George said why don't you go ahead and present it for indictment; indict Watkins while you're at it.

Q. Are you really telling me this was all George's idea?

A. No, sir.

Q. It was yours?

A. I've never said it was.

Q. And you were doing it primarily to help your buddy Bill?

A. I would say that was a primary motive when I called.

Q. Would you think it's a fair statement, Mr. Holmes, to think that's sort of a misuse of the system?

A. I would say it was, yes.

Q. I mean I don't want -- you've got enough, in all serious, Bud, it's a problem. It's a, that's a corruption of that system. Everybody expects you to be doing things in an even handed manner, and actually at least with this friend, you're doing him a favor, you're going to get -- in effect have him cause his own client to be indicted, correct?

A. Well, no, sir. I was going to present the case anyway, just happened to be working out that way.

Q. In hind sight, you would view that conduct as disgraceful, right?

A. Yes, sir. It happens all the time, but I guess it would be.

Q. Speak for yourself, because I know a lot of district attorneys would not like to be viewed as ever having been participating in that kind of conduct.

A. Okay, I'll speak for myself. I know a lot of them that do.

Q. Okay. In any event, regardless of the ultimate motivation, the month and a half, six weeks of the time that you spoke to Bill Porter and George Phillips, you turned the case over to Katy Matison and had her, or instructed her to work up the case, present it to the grand jury?

A. That's right.

Q. And an indictment sure enough is returned against Watkins?

A. Right.

Q. And Drew, correct?

A. That's correct.

Q. Let me just stop here for a minute. Moving away from what motivated you to indict him, it is -- in all fairness to you, Drew had not cooperated as far as you know?

A. As far as I know he did not cooperate.

Q. He was involved by his own admission?

A. That's correct.

Q. Watkins clearly had been the pilot?

A. That's correct.

Q. Just so we also understand it, Royals name was not involved -- nobody had any evidence against Royals as you pointed out before?

A. At that point, that's correct.

Q. Is that correct?

A. That's right.

Q. You went ahead, everybody else had been taken care of in the federal court?

A. That's correct.

Q. No problem with that. The state, if we understand correctly, while there is dual jurisdiction you could indict the same person on the state level, even after he's been convicted in the federal level, you don't normally do it. You don't indict and sentence in the federal level for this crime, then do the same thing in the state case?

A. It's done sometimes. Normally not.

Q. Normally not?

A. That's right.

Q. Here you indicted two people who were logical to be indicted, okay?

A. That's right.

Q. As a practical matter, Bill Porter comes in with him as a client, right?

A. At what point?

Q. As soon as you indicted him, excuse me. He came in himself. You have already described it, Drew comes into the office?

A. Drew came in by himself.

Q. Basically what Drew is doing is complaining because he thought he had a deal over in the federal court?

A. Yes.

Q. Not federal court, but the federal prosecutor.

A. That's right.

Q. Just so the jury understand, this case on the federal level had never gotten into the courts at all in terms of Drew Fairchild?

A. To my knowledge never been indicted.

Q. Judge Nixon had no involvement in it whatsoever?

A. None whatsoever.

Q. And three days later, September 3rd, there is an arraignment, comes into court with an attorney to plead, Bill Porter is by his side, right?

A. That's correct.

Q. I think I recall reading some place in your testimony Bill waving around a check and saying, sort of proud of the fact he was getting paid?

A. My understanding. I don't remember whether I saw it or not. Best I recall, I could have seen it, because I didn't handle the arraignment. But either I was told he had gotten paid or Bill showed it. Bill could have showed to it him.

Q. I have a recollection of your testifying of his waving the check around, showing it to you in the courtroom?

A. Either someone told me or I saw it. Just Bill's way of doing things.

Q. Did he thank you for --

A. I doub it.

Q. -- getting him paid?

A. I doubt it.

Q. You knew Royals, didn't you?

A. Yes, sir.

Q. Bill Porter and Royals were friends?

A. Yes, sir, they were.

Q. Did you know Joe Crone?

A. Know Joe Crone.

Q. Did you know at the time he was up at Maxwell?

A. Right.

Q. Maxwell is a federal prison?

A. Yes.

Q. You were obviously not involved in his prosecution?

A. No, sir.

Q. How close were you with Bill Porter?

A. Real close.

Q. You were aware he and Royals on occasion went up there to see Joe?

A. I learned it, I think after all this started down here.

Q. So what you're saying, what I was real curious about, whether or not you had any awareness of that during this same period of time?

A. No.

Q. Just Joe had gone into the prison in January of 81?

A. Whenever it was. I know Joe taught me how to fly, reason I know.

Q. Joe Crone?

A. Student at Southern, back from Viet Nam, he was teaching flying out at the airport. He was my instructor, where I knew him from.

Q. In any event, so we can pass beyond it, you were not aware Porter mentioning to you having driven up to Maxwell, to Alabama to see Crone with Royals?

A. No, I learned that after all this started.

Q. If there is anything you learned after the fact, just tell me you learned it after the fact.

A. Learned it after the fact.

Q. That's fine. Have you learned anything around that time about Royals visiting Wiley Fairchild?

A. No, sir.

Q. Okay. You learned it sometime later, may not know it at all?

A. Have no knowledge of it.

Q. In any event, picking up the chronology, correct me if I'm wrong, from there the really next significant thing is an effort to bring Watkins back and Katy is preparing for trial, right?

A. That's correct.

Q. Drew's case is set for trial in early January of 82, am I right?

A. Yes, sir.

Q. And in any event, Watkins does not, he's not back -- no, I take it back. He is apprehend in Texas, right?

A. Dallas.

Q. Dallas. Shortly before that, and you use the leverage of his being caught to sort of convince Porter to plead Drew?

A. That's correct.

Q. Okay. And as you said to us, I'm not being, you know, this goes on, I mean you in effect told Porter, look, it's either your man or Watkins?

A. That's correct.

Q. One is, one is willing to testify against the other, I can offer you the same deal that the feds had offered you?

A. That's correct.

Q. It was a little better deal because the maximum fine would have been only five thousand?

A. Whatever.

Q. Am I right?

A. That's right. Same number of years.

Q. Was this a short period of time? When did you make that offer to him, 12th is the day of trial, January 12th was the scheduled day of trial.

A. Probably about, Mr. Fawer, on a given day, and told him I had to have a quick answer because my understanding with the people out in Texas was getting ready to turn Watkins loose because he was claiming he's never been in Mississippi. My understanding time was just of the very, very utter --

Q. Time was of the essence?

A. They were getting ready to turn the man loose. We had to have a picture with an affidavit identifying him.

Q. So the jury understand, if you want to bring somebody back from another state, you can't just say I want him, you've got to prove that the person in the other state is the person who has been indicted in your state. You have to prove it by someone who can swear, either in person or by affidavit that this picture is that person, so you can tie the two together, right?

A. That's right.

Q. That's what you got Drew to do?

A. That's right.

Q. He signed?

A. He signed the affidavit. My secretary typed up the affidavit, went out to his house, he signed it, I think Bill was probably with him. Drew as I recall had some kind of back trouble and couldn't get out of bed, so they had to go out there to his house.

Q. Okay. And you discussed, you talked about the matter with him?

A. I didn't, no.

Q. Just getting the affidavit signed.

A. Did I talk with Drew?

Q. Yes?

A. No, I never went out.

Q. I thought you said you went out --

A. No, my secretary.

Q. In any event, they accept the plea, even though it's put on short terms, right? Short period?

A. The affidavit.

Q. No, no, they agreed to the plea?

A. Yes, Bill called him up, my understanding, because Bill called me back, said yeah, we'll do it. I said fine.

Q. From your perspective as district attorney, he was in the same position, a little better position than he had been in a year before, you had made a plea agreement with him, right?

A. That's correct.

Q. He wasn't going to do any jail time?

A. That's correct.

Q. He was going to do some probation?

A. Probation.

Q. Get a five thousand dollars fine?

A. That's right.

Q. He had to testify against Watkins?

A. That's correct.

Q. Is it fair to say that you, that you and Porter both knowing, talking the language, and Drew as well, knew full well you don't have the sentencing until after you get the testimony?

A. That was the definite agreement.

Q. From day one?

A. Day one.

Q. Wasn't even, that's not even the kind of thing you -- you don't have to talk about it, you know the sentencing is going to be held off?

A. In this particular case it was definitely spelled out, you know, to Bill.

Q. Orally?

A. Oh, yeah. I said tell, because Drew was wanting -- as I recall it, Drew was wanting to go to Oschner's Clinic to get his back operated on.

Q. That's correct.

A. And Bill was saying something, put the sentencing off until after that. I said well, Bill, he will not be sentenced under any conditions until after he testifies.

Q. You've done this in hundreds of cases?

A. At this point Watkins I think is going to be tried in February.

Q. We're in January, that's right. He comes back, based on the affidavit you're able to bring him back?

A. Straight on back on over, I think the records show I believe we set it for trial in February.

Q. So the jury, so we can just move ahead through this, what happened though is there is a serious of motions in terms of change of venue, don't want the trial in Hattiesburg, there is a period of delay?

A. If he had had a lawyer when they came in and contested, I assume he probably come in an plead guilty. That's what 90 per cent of them do.

Q. They didn't.

A. In this case he didn't come in.

Q. He didn't come in, there was motions filed, change of venue motion, right?

A. No, not in the first one.

Q. I beg pardon. He skipped.

A. He skipped. He skipped, Texas turned him loose under a five thousand dollars fugitive bond.

Q. Okay. So there --

A. We're sitting here waiting on him for us to pick him up.

Q. I got my facts wrong.

A. Skipped down in Florida.

Q. Okay, let's stay where we are. He skips in February, Drew as a practical matter is unavailable because he's gone in for an operation in early March into Oschner's, can't get Watkins back, without Watkins the sentencing just has to go off until later, correct?

A. That's correct.

Q. That's what goes on, there is nothing going on in terms of publicity, that's all passed at the time Drew had pled, right?

A. That is correct.

Q. Nothing new. April, excuse me. February, March, April, May, Drew's over in the hospital and then recovering, June, July, August, September, October, November, December. A little bit before that, in October, you found Drew in Florida?

A. No, found Watkins.

Q. I must be getting a little dizzy. Okay. You're right. You found Watkins in Florida, late October, Katy, your assistant, began extradition proceedings again. If you need to know the dates --

A. I'm trying to think, did we find him that year or the following year?

Q. October 28th?

A. Pardon?

Q. 82. He comes in on January 26th 83, so obviously he actually -- follow me and you'll see.

A. If you're saying it's the same year.

Q. October 28th that you begin, so you understand. The file of this case is here in court if you need to see any documents.

A. If you say that's the date.

Q. Okay. What happened at the, month and a half later, two months later, while the extradition proceedings are going on, it's not moving very fast, right, the extradition, he's fighting it, and you're not getting him back very quickly, right?

A. That's right. Had a lawyer down there and they were contesting it.

Q. All right. And you --

MR. FAWER: Could I have the order referring the case to the files, passing the case to the files? I think it's Government's 4.

BY MR. FAWER:

Q. You looked at this I think before?

A. Yes, sir.

THE COURTROOM DEPUTY: It must be up there.

BY MR. FAWER:

Q. You got it up there. There it is.

A. Yeah.

Q. You filed the motion and the order was entered passing the case to the files partly because of Watkins' unavailability at this point?

A. Right.

Q. And partly because there was also a technical constitutional problem, under Mississippi law you're supposed to sentence someone within a reasonable period of time. Is that right?

A. Rule 6, yes.

Q. Rule 6. And the one way, if you keep putting that off, that reasonable period of time begins to get unreasonable. Right?

A. Right.

Q. So one way of tolling it, stopping the clock from running, is passing the case to the inactive files. Is that right?

A. That's right.

Q. In any event, the motion is filed in June of, excuse me December of 1982, that refreshes your recollection that it was in December, right, that he would have been caught?

A. That's right.

Q. And a month later, or by the end of January extradition is accomplished and he's brought into court on January 26?

A. Right.

Q. Right?

A. That's correct.

Q. When you pass it to the files right around Christmas of that year, --

A. Right.

Q. -- the newspaper didn't pick it up until after the first of year?

A. Right after Judge McKenzie took office.

Q. Jack Weldy signed order?

A. Right.

Q. I don't know when it got in the files, the newspaper people were too busy partying, anyway, they missed it, they didn't pick it up until the end of January?

A. Right.

MR. FAWER: What number are the newspaper articles? Thanks.

BY MR. FAWER:

Q. Let me just leave these in front of you, six A. I guess if you read a newspaper you read the Hattiesburg American, the local paper. Right?

A. Right.

Q. That's it. The first one is January 7 edition and I think you're quoted in there some, I mean the publicity was not terribly favorable when the case was passed to the file? Once they realized it, there was some adverse publicity. Right?

A. Right.

Q. The way I understand it, I don't think it's in the press, Judge McKenzie gets on the bench January 2, next day he's going through the files, sees the indication passed to the file and recognizes the name Fairchild?

A. Right.

Q. And makes some comment to the court and some large-eared reporter picks up. Right?

A. Right.

Q. What we end up with, Marvin Rueben is talking about it on the TV. Right?

A. They blew it up.

Q. They blew it up?

A. Right.

Q. Marvin Rueben is talking about it, Janet Braswell is writing about it in the Hattiesburg American. Right?

A. Right.

Q. This is all out of the blue. Right?

A. Right.

Q. You're quoted as saying passing to the files doesn't mean anything, you're just putting it on hold, doesn't mean the case is dismissed, it can be brought back; as soon as we get Watkins, we'll bring it back?

A. Right.

Q. You're quoted as saying just that maybe in the middle of it?

A. Right.

Q. And that's absolutely so?

A. Right.

Q. You have Watkins a few days later, a few weeks later, Watkins, your people bring him back, your sheriff's office takes custody of him in Florida and he's brought back into court. Right?

A. No.

Q. What happens?

A. Watkins' lawyer brings him in with an agreement.

Q. Watkins' lawyer works it out?

A. Right.

Q. Hundred thousand dollars bond. Right?

A. Right.

Q. They got him on a hundred thousand dollars bond in Florida. Right?

A. Right.

Q. If you keep it on the same bond, we'll make the bond, we'll bring him in?

A. That's right.

Q. He's brought in, makes a hundred thousand dollar bond?

A. Right.

Q. January 26, 1983. Right?

A. Right.

Q. And you at that time, same day, file a motion to bring the case back from the file. Right?

A. Right.

Q. Okay. So the case comes back and it's been off the file, it's been on inactive status for all of 33 days. Right?

A. 30.

Q. December 23 the first one, January 26, it's back. Right?

A. Right.

Q. And once again the newspaper publicity hits like crazy. Right?

A. I don't remember it going back to the active docket, I don't remember anybody raising Cain about it.

Q. You mean coming back on the active docket?

A. That's right, come back on the active docket. As a matter of fact there was a newspaper article about it, but --

Q. The first one I mentioned, not first page but next one is it, isn't it? Fairchild case back off the inactive docket. That's right?

A. That's right. Returns to active file, right.

Q. It did get some publicity. Right?

A. Right.

Q. To from somebody that doesn't know what's going on it looks like somebody's got this case on a yo-yo, moving up and down, in and out, to someone that's unsophisticated?

A. I don't remember it creating any kind of a stir when it came back.

Q. But as I say, there is some kind of publicity?

A. Right.

Q. You have known Wiley Fairchild for some period of time?

A. Right.

Q. He's not a close friend but I think you said yesterday if you live in Hattiesburg you know the name Wiley Fairchild?

A. That's right.

Q. He's a successful man in the construction business but particularly so in the oil and gas. Right?

A. Right.

Q. Have you prior to 19 -- Let me go back. When you indicted Drew on August 26, I understand, at least Wiley says that you gave him a call and simply told him as a courtesy his son had been indicted, why don't you let him come in, we'll release him on H-O-R?

A. That would be totally false.

Q. You deny it?

A. That's right.

Q. You read his testimony and he said that. Would I be right?

A. To be frank, he might have testified up here. I don't remember it being in the Grand Jury testimony. It could have been, I just don't recall.

Q. In any event you don't recall it?

A. It did not happen.

Q. I thought there was no dispute about that. Let's just go beyond that.

A. I was questioned in the Grand Jury about it, but that just didn't happen.

Q. In any event that would have been another subject to the extent they would prove that, that would be one of the proofs you had contact with Wiley Fairchild after the date of the indictment. Correct? That was one of the charges? I don't want to go back into it.

A. It could have been, I don't recall.

Q. Anyway, what was your relationship with Wiley? Any?

A. Very, very, very distant. You know, speaking.

Q. Speaking terms?

A. I don't believe anybody is close to Wiley, really.

Q. He really doesn't have a lot of friends?
A. I'll say he has a lot of acquaintances.
Q. I said friends.
A. You will have to ask somebody other than me because I'm not qualified.
Q. Do you know of anybody that's a close friend of his?
A. His brother is.
Q. I didn't say relative, I know a relative can be a friend but aside from relative, a friend can you name anybody or can you name three people who you view as his close friends?
A. I'm not socially --
Q. Okay. Let's not press --
A. It would be improper for me to comment on that.
Q. You have been around him, is it fair to say he's -- How would you describe him? How would you describe his ability to communicate? Tell me if I ask you here the name Wiley Fairchild, how would you describe him?

MR. WEINGARTEN: I'm going to respectfully object. Excuse me, Mr. Holmes. I'm going to object to the relevancy of Mr. Holmes' descriptions and opinions of Wiley Fairchild.

THE COURT: What difference does it make?

MR. FAWER: I'm leading into the call and what the state of mind was, what he understood the state of mind of people was.

THE COURT: Let's recess until 1:15 for lunch.

MR. FAWER: Thank you, Your Honor.

(Recess.)

(End of Volume 7.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: January 31, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 8

DAVID A. SCOTT
COURT REPORTER
Post Office Box 2202
Jackson, Mississippi 39225-2202

JANET CLEMENS
COURT REPORTER
Post Office Box 517
Oxford, Mississippi 38655

BY MR. PAWER:

Q. Let me just -- may I, Your Honor? May I proceed?

THE COURT: Yes, sir.

MR. PAWER: Thank you.

BY MR. PAWER:

Q. Mr. Holmes, just backing up for a minute, as I understand it, I think you testified on direct that Bill Porter was making some noises at the end of 1982 about making, filing a motion under the Speedy Trial Act to have the case taken care of. That was of some concern to you, right?

A. Right, yes, sir.

Q. No question in your mind that it was a motion that because of Rule 6 concerning the sentencing within a reasonable time of plea, that it could have had some merit and it was causing you some concern and the filing of the motion to pass to the files was in order to avoid that problem?

A. That was some of it. Of course the primary reason I passed it to the file, because I had told Mr. Fairchild that I would do it.

Q. That's what I'd like to come to then, okay?

A. Okay.

Q. As I understand it, this all happens, do you recall it happening in, the day that this happened apparently the judge indicates that he's spoken to Wiley Fairchild, right? The day of this phone call, when you go to the farm, you know what I'm talking about?

A. Trying to figure out --

Q. Phone call. The one thing you're going to remember is about the phone call, right?

A. I remember.

Q. And you recall him being out there, and it had something, I thought I heard you say, read in the grand jury that you had been hunting, turkey season or something like that.

A. Earlier, we had been up to Vicksburg at Larry Crowe's.

Q. At where?

A. Larry Crowe's, C-R-O-W-E. He owned some property up there, friends of the judge. We had been up there hunting.

Q. As I understood it, what happened is that you and he had gone hunting, right?

A. Yes.

Q. Up around Vicksburg?

A. Right.

Q. And the judge had, he had to go on some place, what was the story?

A. My understanding I believe he went to Meridian to hold court. He stayed up there. Wasn't coming back home, he asked me to bring his turkeys.

Q. He would stop back from Meridian on the way back?

A. Get them at a later date, yes, sir.

Q. We're talking about, in other words you go hunting, you bring the turkeys home for him, he goes to Meridian, and then picks them up on the way back?

A. Not necessarily on the way back. Mr. Pawer, he just said he would get them at a later date.

Q. You date this in some way -- that fixes it for you in some way, doesn't it?

A. Yes, sir.

Q. His coming back in town?

A. Pardon? I didn't follow you.

Q. I beg your pardon. The reason as I understand it he's coming out to the farm is to pick up these turkeys.

A. That's correct.

Q. And you associate that obviously with turkey hunting season. You associate that with his having -- I mean he doesn't live in Hattiesburg, so he's either passing through or he's holding court, something of that sort, correct?

A. Mr. Pawer, I'd be less than honest if I told you I knew what his mission was, other than he came by the office. I was not expecting him, you know, by there as I recall, seemed like he just either called, said he would come by to pick up his turkeys.

Q. If he had been in town you would mostly --

A. I probably would have known if he had been up here for court.

Q. You were driving out, you're together that evening, does he say, hey, I've just come back, been a long day in Meridian, I've been holding court in Jackson, Vicksburg? What do you recall many saying as to where he was that day, for example? You say it was at the end of the day?

A. Right.

Q. Had he held court in Hattiesburg, the answer is most likely not?

A. I do not remember him, you know he very likely could have told me where he'd been. I'd be less than honest to sit here and tell you he said this, that or the other.

Q. What's your best understanding from -- was he passing through on his way back to the coast?

A. Only thing I know, he told me he had been out to Mr. Fairchild's, he called --

Q. Let me understand --

A. He called from Mr. Fairchild's up to the district attorneys office, said he was coming down.

Q. I don't recall you ever testifying about that before until this minute.

A. Well, I mean it never came up before, I mean, but that's where I remember that he called, as I recall said he was at Mr. Fairchild's.

Q. Let me stop a minute. You testified about this now, February 21st, right?

A. Yes.

Q. June 28th, correct?

A. Whatever.

Q. Okay. Yesterday?

A. Yeah.

Q. You have never to this minute, I don't think testified about a phone call from Wiley Fairchild to you? Correct?

A. As I --

Q. Have you ever so testified?

A. I don't recall seeing it in a transcript.

Q. Have you ever mentioned under oath at any time Judge Nixon calling from Wiley Fairchild's?

A. I don't recall, no, sir.

Q. The answer is yes or no?

A. No, I say I don't recall it.

Q. Would you like to see your transcripts, each and every one?

A. I don't believe it would be in the transcript.

Q. You have never said to it this minute, correct?

A. To my knowledge, I have not.

Q. Okay. First time, right?

A. Unless, you know, there is no reason for it to be in there or not.

Q. Answer my question.

A. I do not recall doing it, Mr. Fawer, no, sir.

Q. Would you accept the fact you never have so stated?

A. To my knowledge, there is nothing recorded that I know of to that effect.

Q. Okay.

A. It's really not a big deal whether he did or didn't call. I don't remember. Just something in the back of my mind --

Q. Mr. Holmes --

A. I asked the question --

Q. You and I will have no problem if I ask the questions and you answer them. If you need to add something, tell me and we'll decide whether you will.

A. Okay.

Q. Okay?

A. No problem.

Q. You were questioned with great care three times, twice in the grand jury and here, and you choose, or it never dawned on you to mention a phone call where he called you ostensibly from Wiley Fairchild's to this minute, right? We can go on from there?

A. Okay, that will be correct.

Q. My question to you is, did you, was he dressed in a suit? Did it look like he had come from court? Can you tell us anything, can you give us any information as to where he had come from?

A. No, sir.

Q. Let me ask you this way. Was it your feeling he had come from Biloxi, come up that day, was going back to Biloxi?

A. Mr. Fawer, that could have been the fact. He came by the office a number of times, what I'm trying to say. There is a number of times in that book, I think he's been by a number of times where it's not in the book.

Q. Let me ask you a question.

A. All right.

Q. You knew he was going back to the coast that night?

A. Yes, sir, I know that.

Q. Do you know him often to come running up from Biloxi to see you, without having, without staying in Biloxi, or without -- excuse me, without staying in Hattiesburg to hold court or going on to Jackson or Vicksburg or Meridian? Have you ever known him to do that?

A. This would be very unusual.

Q. Okay. I guess what you're saying, that would be very unusual, it would be unlikely it would have occurred here?

A. Correct.

Q. Okay. Now, you date all this -- you got a date you put on this, right?

A. Right.

Q. May 14th?

A. Right.

Q. Even say it's May 14th, I think when you first testified in the grand jury, the turkey season stuck in your mind, that's how you fixed it in the spring, right?

A. That is correct. That's correct.

Q. You had no idea whether it was 1982 or 1983?

A. If that was my testimony, that would be correct.

Q. The problem I have is I have to deal with what you said. I've looked at it, hopefully you have some vague recollection of what you said under oath?

A. Mr. Fawer, I think I've testified like what, four or five times.

Q. Three.

A. Okay. Three. I've been interviewed on numerous occasions down there, and I'm just not in a position to sit right here and answer what I said this time, that time or another time. I can tell you generally, and you can refresh my memory.

Q. What we'll do is this. If I question you about a given proceeding and you don't remember, you ask me for the transcript.

A. Okay.

Q. And I will hand it to you.

A. All right.

Q. Every one of them is here.

A. All right.

Q. I have looked at them, take my word for that.

A. Okay.

Q. Okay?

A. All right.

Q. What is unacceptable is I don't remember, because we can always find out?

A. All right, get the transcript, very good.

Q. Do you want to see that on February 21st, when asked when this happened, you said spring of 1982 or spring of 83, had to be spring because it was in turkey season?

A. That's correct.

Q. Didn't know which year, right?

A. At that time, no, sir.

Q. At some point thereafter, you decide it was May 14th 82, right?

A. That's right. I'm sure, I went back and asked my secretary to look up a specific date, and she did.

Q. Oh. The specific date?

A. That's right, without, excuse me. If she could determine when it was Carroll and the judge came by the office.

Q. Is that the only date were are there together?

A. No, could have been a different date than that. Let me say this. I've given what I think is the date. It could have been a different date.

Q. I want to deal with it. See, you're on record, it has a bearing for my purposes, okay. Let's stay with it, okay?

A. All right.

Q. Do I understand what you're telling me right now, are you saying it was May 14th, 1982 or you really don't know?

A. My best recollection, my best opinion is it was on that date. It could have been a different date.

Q. Could have been. Could have been a difference year?

A. Well, it was before it was passed to the file, I know that.

Q. Now we're coming to it. In order for it to have been before it was passed to the files, it had to be in 82, according to you?

A. All right, sir.

Q. Am I right?

A. Passed to the file in --

Q. December of 82?

A. 82.

Q. Before, in February of 1984, you're never mentioning, you never link the passing to the files with the conversation -- beg pardon. Before December 21, 1985, when you go to the grand jury and use the phrase 82 or 83, you are never attributing to that conversation anything about passing it to the files, am I right?

A. Probably wasn't trying to tie it down.

Q. Shall we go to the grand jury?

A. Sure.

Q. Do you want to see it?

A. Certainly.

Q. Okay. You agree February 21st is the first time you mention the telephone call? You were there in July, no mention of it. Government didn't even know about it. You were there in September, government --

A. In my third appearance the first time I mentioned it. That's one when I -- that's one when I was trying to cover it up.

Q. Just answer my questions, okay?

A. Okay.

Q. I didn't ask you that. We'll come to that, okay?

A. Okay.

Q. I asked you if that's when you said that it was at that point in time, you don't mention -- you talked about the phone call, right?

A. Right.

Q. You don't in any way say anything about passing to the files occurred in that call, right?

A. That's correct.

Q. The next time you ever discussed this under oath is your June 28th, 1985 grand jury, right?

A. Right.

Q. All of a sudden, well, something has happened before that. You've read Wiley Fairchild's grand jury, right?

A. That would be correct.

Q. Okay. And you knew that he said that the thing that happened after the phone call was passing it to the files?

A. That would be correct.

Q. Right?

A. Right.

Q. Then you come into the grand jury and you say that in this conversation is the discussion of passing it to the files, correct, in June of 1985?

A. The last time I went, yes, sir.

Q. And then you started to figure out, you got to come up with some information, you cut a deal with the government, right, by this time?

A. We had a plea bargain.

Q. You cut a deal, right? I mean to live up to your bargain, you have to in some way corroborate the story, right?

A. Got to tell the truth.

Q. Sure. You have to do that, your record doesn't look like that's a very high priority. Look at the amount of times you have gone in and told the truth and not told the truth, is that a high priority for you, truth telling?

A. Yes, sir.

Q. Is this born again, or just something that's been going on for sometime, forgot about it?

A. I can't remember the question.

Q. Surely. I gather from the number of the times you've been cavalier with the truth it's not a terribly high priority item for you, you understand my question?

A. Right. I understand.

Q. Okay?

A. Okay.

Q. All right. Now what I'm asking you is that there came a time in June when you're trying to figure out, up to this point it could be May of 82, May of 83,. Now you're saying wait a minute, we discussed passing it to the files so it has to be 82, right?

A. Well, no, sir, I got the date, like I said, from the --

Q. You go, I don't want to interrupt you.

A. I understand.

Q. You're looking for a date to corroborate the discussion having come before the passing to the files?

A. It naturally had to because that was the substance of the phone call.

Q. That's your story now, right?

A. Right.

Q. By the way --

A. Okay.

Q. You have read Wiley Fairchild's testimony in preparation for your own trial, right?

A. That's been what, seven or eight months ago.

Q. You have read it, right. Do you want to see it again?

A. I'll be glad to if you ask me. I don't care to see it.

Q. You know that he does not suggest that you ever mentioned passing it to the files in that phone conversation? You know that, don't you?

A. To be frank, I don't remember.

Q. Want to see it again or do you want to take my word for it?

A. I'll take your word for it.

Q. He has not changed his testimony even through yesterday of this year.

A. All right.

Q. Now we're going to come up with a date, you say --

A. I recall Mr. Fairchild said something to the effect it was supposed to be dismissed,. Read it in the newspaper.

Q. I don't care about the newspaper. You tell this jury what it is. You read the transcript, am I right?

A. Yes, sir.

Q. You're either going to agree with what I'm telling you or you have an opportunity to read it as you sit on the stand.

A. All right, I'll read it.

Q. Fine. We'll proceed, we're getting a copy of the November 28th transcript of Wiley Fairchild. Would you like to see his testimony from yesterday?

A. I don't need to.

Q. Okay. In any event, you go to tell your secretary, go look and -- go look at the calendar, this is the same secretary who found the Drew Fairchild date, right?

A. Right.

Q. You said go look at the calendar, find out if there is any dates in which Ingram and the judge were in my office together, right?

A. No, sir, wasn't what was said.

Q. What did you tell her?

A. Told her to go find the date that we all went out to Bonnie and Clyde's that night, that was the --

Q. Where is your calendar?

A. My remembrance it was the night we went out there.

Q. You didn't remember when that was?

A. No, sir.

Q. So the jury understands, you went out to Bonnie and Clyde's one night and there was some sort of incident between your girl friend --

A. Secretary.

Q. And your secretary?

A. That's correct.

Q. Which ended up in some sort of altercation?

A. That's correct.

Q. And you think in your mind that occurred the same night the judge was out at the farm, right?

A. It occurred the night before Gary Turner got married in Jackson --

Q. No, no --

A. This is how we pin down, find out the date Gary Turner got married, pinpoint it. That's how we pinpoint that date.

Q. One full --

A. It could have been a different date than that, that's my best recollection, it's that.

Q. Jury understands, some one got married on May 15th, right?

A. Right.

Q. In Jackson?

A. That's correct.

Q. That date happened a day after your girl friend had a fight in a bar, am I right?

A. That's right.

Q. Okay. Now unless there is some way of tying those two events to the judge visiting you, at the farm, they have no meaning, right?

A. Of course the judge went with me to Bonnie and Clyde's that night.

Q. Oh, really?

A. Yes, sir.

Q. Where did you testify about that?

A. I don't know that I have.

Q. Oh, another one. The judge went with you to Bonnie and Clyde's?

A. He left my farm, we went by Bonnie and Clyde's, I drove him from Bonnie and Clyde's down to his car and he went back to Pascagoula.

Q. Let's just understand something.

A. I think my testimony, I've testified to that, that's in my last transcript.

Q. We'll show it to you.

A. Okay.

Q. Just so we understand. Bonnie and Clyde's is a bar and restaurant in town here?

A. Right.

Q. The judge and you have been out there, right?

A. Right.

Q. The party of October 28th took place there when he was --

A. That's right.

Q. When he was made chief judge?

A. That's right.

Q. So the idea of you being with the judge, you're saying to a jury that you were with the judge on an occasion at Bonnie and Clyde's; there were a number of times you were there together, correct?

A. This is the only other time that I remember.

Q. He's never been to Bonnie & Clyde's but this one/H night?

A. He could have been before. I don't remember but the one time.

Q. And was he there when this fight took place, too?

A. No, sir, I'd already taken him to his car.

Q. What happened? He just left?

A. No, he came by there for a few minutes, seemed like he had one drink and I drove him to his car.

Q. Where am I supposed to find that you said this in your earlier Grand Jury? The last time you appeared?

A. The last time I appeared.

Q. First, I'm giving you Defendant's Exhibit 22, here's Wiley Fairchild's testimony of November 28, here's what you're looking for, Wiley saying you in the phone conversation said anything about passing it to the files. When you come to it just stop and point me to it, okay? Without reading it aloud, just show me where it is?

A. Before before I look for it may make this statement?

Q. Sure.

A. I don't recall Mr. Fairchild using the exact legal terminology I'll pass it to the files.

Q. What did he say?

A. I don't remember.

Q. Well, you find where you think he said the same thing?

A. Okay.

A. Right here on page 29.

Q. Let me just stop a second.

A. Okay.

Q. Okay?

A. Okay.

Q. Show me where it is.

A. What do you understand the man to mean? That he had talked to --

Q. Excuse me. I want to know where he says that you verbally said about passing it to the files.

MR. WEINGARTEN: I object, Your Honor, Mr. Holmes can answer the question.

MR. FAWER: No, he can't, unless he's going to point it out as a --

THE COURT: Wait a minute.

MR. FAWER: Excuse me, Your Honor, with all due respect --

THE COURT: You have asked him a question.

MR. FAWER: Correct.

THE COURT: If he's found something in the transcript that he thinks means pass to the file, --

MR. FAWER: I agree with you.

THE COURT: -- or otherwise, --

MR. FAWER: I agree with you, Judge.

THE COURT: -- he can read it.

MR. FAWER: My question was that it be --

THE COURT: Let him read it.

MR. FAWER: But that's not what he comes to. He's talking about happened later.

THE COURT: Let me him read it.

MR. FAWER: Fine. Read us what was said.

BY MR. FAWER:

Q. Why don't you tell us what he said you said?

A. Mr. Weingarten said, question now the Grand Jury is very interested in the conversation you had with Judge Nixon and Bud Holmes that evening. Okay? Answer, yes. At the time the conversation took place is it fair to say that Drew had been indicted by the Forrest County Grand Jury and was awaiting sentencing? Answer. Yes. What did Bud Holmes say to you again? It's important. As best you can recall.

The answer, the reason that I called Carroll to bring Judge Nixon out there, we paid this $10,000 to Bill Porter and that was supposed to be the end of it, see? And but when he came out there with Bob Royals and I, of course, was mad and told him that it was nothing but a damn blackmail and that I just wasn't going to pay off. And that was about two or three o'clock. And that night the phone rang and I answered it, -- he's talking about the phone call, -- about 7:10, 7:15 or about that time, because it's about the time I go to sleep, and Judge

Nixon says, Wiley, you know that fellow that we was talking about this evening? I says, yes. He said I'm out at this house and he says everything is going to be all right. Question, what did you understand that to mean? Answer --

Q. Excuse me just a second. So far he's describing a conversation between himself and who?

A. A telephone conversation between Judge Nixon and himself.

Q. Had he said a word about passing it to the file?

A. No. Let me go on. Question, what did you understand that to mean? The answer, that he had talked with Bud and Bud was going to take care of Drew's thing, pass it to the file. You have it underlined there.

Q. Sure, I do.

A. Now it wasn't mentioned, pass it to the file, but everything was going to be all right.

Q. So we understand --

A. Right.

Q. -- your testimony, you said it to Wiley?

A. That's correct.

Q. Now that's what I'm asking you about. So far, he has said that the Judge never mentioned it. Now come to what I've asked you about.

A. What did you understand that --

Q. Well, --

A. May I finish?

Q. Go ahead.

A. Okay. And then what did Bud say? When he got on the phone he said, Wiley, if this man asks me to do something I don't ask questions, I just go ahead and do it. Question, what did you understand that to mean? Answer, that I forget about Drew's case, that it would be passed to the files.

Q. Your testimony so we understand --

A. Let me finish. In fact following those conversations -- What was the next thing you remember, well, it was passed to the files, you asked in this conversation where it was passed to the files, that's where it was mentioned.

Q. You read -- Did I let you read everything?

Q. I let you read everything that you wanted to read?

A. I answered the pertinent part. I thought it answered the question.

Q. Okay. The question was asked of him, what did the Judge say and there was not a word about passing it to the files in his relating with the judge. Is that a fair statement?

Q. Is that a fair statement?

A. It -- He said he understood.

Q. I didn't ask you what he said he understood. Do you know the difference between what --

MR. WEINGARTEN: I object. It's argumentative.

MR. FAWER: Your Honor, I have a right to ask, interrogate him as to what the man dsaid.

THE COURT: Yes. And he's got a right to answer and explain it.

MR. FAWER: Of course, Your Honor, I have --

THE COURT: There's no cutting off until he made the answer.

MR. FAWER: I wasn't cutting him off. He interrupted me, there was no cutting off at that point, Judge.

THE COURT: That's not my recollection of it.

MR. FAWER: Okay. I'm sorry.

BY MR. FAWER:

Q. Mr. Holmes, so we understand, there are things you under understand in your mind and there's things you hear. Correct? Is there a difference?

A. That's true.

Q. Okay. What I understand you to mean, like you told us before, when the government was telling you how you could avoid indictment, they didn't mention Judge Nixon by name?

A. Did not.

Q. You just understood it?

A. That's what I understood.

Q. Okay. Here, Wiley, in his Grand Jury, after he entered into his plea agreement, is saying the Judge said, X, he interpreted it but he never heard the Judge say a word about passing it to the files. Fair statement?

A. I don't believe the Judge ever said pass it to the file.

Q. Okay. You testified -- Let's stay with Wiley. Wiley again is saying what you said, quoted you. Correct?

A. That is correct.

Q. Not a word about passing it to the files. Correct?

A. Said that's what he understood it meant.

Q. My question again: Draw a distinction between what you understood and what he said he said.

MR. WEINGARTEN: Objection, Your Honor, this is argumentative and repetitive.

MR. FAWER: I have a question about the distinction. What someone has in his mind, his testimony is he said to Wiley Fairchild, I'll pass it to the files. Now we have --

THE COURT: Go ahead.

BY MR. FAWER:

Q. That's what your testimony is. Right?

A. I believe so, yes.

Q. Now Wiley does not quote you as saying that, he recalls you saying as you just read, when this man asks me to do something, I don't ask questions, I just go ahead and do it. That's the --

MR. WEINGARTEN: I object. Mr. Fawer is impeaching Bud Holmes with Wiley Fairchild's testimony and that's irrelevant.

MR. FAWER: Excuse me. You read it before to him. Remember?

MR. WEINGARTEN: He's impeaching Bud Holmes' testimony this morning with Wiley Fairchild's Grand Jury testimony. That's improper.

MR. FAWER: When he did it, it was okay.

MR. WEINGARTEN: I did it?

MR. FAWER: And I stood up and objected. You don't remember?

MR. WEINGARTEN: I ask for a ruling.

MR. FAWER: I mean he read it.

THE COURT: Overruled. Proceed.

MR. FAWER: Thank you.

BY MR. FAWER:

Q. Let's go on.

A. All right, sir.

Q. We really came to this whole issue by virtue of the fact initially you make no mention of passing it to the files but on June 28, you're mentioning in the conversation, you're mentioning the use of the phrase pass it to the files. Right?

A. If that's correct.

Q. You did?

A. Okay.

Q. In June?

A. Okay.

Q. You did it today. Right?

A. Right.

Q. Now you're dating this and what you're telling us is there was some incident at -- there was a wedding on the 15th in Jackson?

A. Right.

Q. And a fight the night before. Right?

A. Right.

Q. And I looked at your Grand Jury while you were reading this and I noticed that there you said, in your Grand Jury, in June 28, I handed the phone back to the judge and we left and went on back to Hattiesburg and went to Bonnie & Clyde's, drove him to his car?

A. That's correct.

Q. Okay. Now you're telling us maybe I misunderstood?

A. Okay.

Q. You're saying, you didn't just go to Bonnie & Clyde's alone and drove him to the car first, the two of you went in?

A. That's correct.

Q. I see. Okay. Who else saw him there? You know anybody?

A. Sure, Jimmie Pace, my secretary.

Q. They all saw him that night?

A. Yeah, I think Tom Pace did, Tom was out here in the room, Tom Pace was there, Charles Bolden was out there, they were all there.

Q. Okay. And by the way, you of course were sure that Carroll Ingram was there that afternoon too?

A. That's what the book said.

Q. Wait a minute?

A. Okay. My recollection is Carroll came over there that day. Yes.

Q. I got a problem.

A. Okay.

Q. Do we look to the book to know what happened or do we look to your memory?

A. Mr. Fawer, that's been four years ago. I can't -- The best of my remembrance is that he was up there.

Q. Okay. So what you did is you tell Jimmie Pace, find a date, see if there are any dates when Carroll and the judge are there together. Correct?

A. No, I told her to find the date following the incident because the incident occurred before Gary Turner's wedding.

Q. Bud, isn't it fair to say that you were trying to figure out a day, that you didn't remember the date of the wedding? Am I correct?

A. That's correct. I asked Gary Turner what day he got married.

Q. Let's come to the book. Do we have a copy of the book itself? Is this it? I'm sorry?

May 14, I've seen it, I've seen a copy of this book because interestingly, Jimmie, I take it, is fairly thorough, she under the circumstances puts down all these names. I take it if you see a B by a name it means you?

A. Bud.

Q. If it has a K, it would be Katie?

A. Yes.

Q. What about an S?

A. S? To be frank I don't remember an S being there.

Q. I see a J. But the initials always mean the person whom the visitor is coming to see. Right?

A. Normally, yes, sir.

Q. So we look at May 14 and -- I'm sorry I'm looking at April. There we are. I might be mistaken but there's nothing on that day. It's blank?

A. I told the jury and told you earlier --

Q. Just answer the question. It's blank? Right?

A. That's right and I already explained to you.

Q. Okay.

A. She just keep enumerating on the wrong day, it's actually on Friday.

Q. Oh, this is the one?

A. Friday if you notice is blank.

Q. I understand that.

A. That's right.

Q. So we understand, the calendar shows Ingram and Nixon are there on the 13th, not the 14th.

A. That's correct.

Q. Okay.

A. Did you notice the 14th is blank.

Q. The way we know this now is we are supposed to believe it happened on the 14th is that you spoke to your secretary, who said, oops, I remember three years later, I made a mistake on that day?

A. No, that's just what she assumed because that was the way it was. It wasn't any real super accurate --

Q. Look, I want to know something.

A. All right.

Q. If all of this is supposed to have happened on the 14th?

A. All right.

Q. Unless you -- of course, you say, unless you start by concluding this is in error?

A. Okay.

Q. What made Jimmie, your secretary say, of all the dates in this year and all the years she's been working and keeping such a record, what makes her remember that this was, should have been on this day?

A. Because it was on a Friday. He got married on a Saturday.

Q. Wait.

A. Wait, you asked me a question and I can explain it. He got married on Saturday and the squabble out at Bonnie & Clyde's took place on Friday.

Q. Is there anything in the diary that reflects the squabble, number one?

A. No, sir.

Q. Is there anything reflects anything about the wedding the next day?

A. No, sir.

Q. So assuming the 15th was the day of the wedding?

A. Right.

Q. Assuming the 14th was the day of the squabble, how does that point out to Jimmie that these two people visited on the 14th not the 13th?

A. Because we are all out at Bonnie & Clyde's that night.

Q. Oh, so it's the conclusion that says to Jimmie, I must have made a mistake, these dates, these people all came the next day? I mean what else, how does she --

A. The 14th, which was on the Friday, Mr. Pawer, is blank. Her explanation is that she put it on the wrong side of the ledger.

Q. I see some other people on Thursday, the 13th?

A. Right.

Q. How do we know she didn't make a mistake on aul of them?

A. I didn't say she could not have made a mistake.

Q. So we get through all of this, basically what she is saying my calendar my record has always been blank on the 14th. Right?

A. Right.

Q. There are dates that are basically blank, I've looked through it. Right?

A. Royalty.

Q. So a blank date has no great significance, right? She's saying, oh, I must have made a mistake, it should be on the 14th?

A. It was the day before we went to Jackson the morning.

Q. But I say it's based on the fact that you claim those things happened, with no independent connecting fact that says I really need to remove these two names from this date and move them over here to be correct. Is that right?

A. If you went by that. You could go right back without the book you go back to the day before the wedding up there.

Q. Okay.

A. I mean even without the book that's how you identify it.

Q. What?

A. Even without the book that's how I identify it as the day before the wedding.

Q. If you don't have this book tell me what you have aside from you're saying it?

A. Okay.

Q. My question is I don't care when the wedding was. The Judge didn't go to your wedding. Right?

A. I don't know.

Q. He wasn't there at this fight in the bar. Right?

A. Right.

Q. In some way, let's assume for argument's sake, even, that the Judge was at Bonnie & Clyde's that night.

A. All right.

Q. How does that tie that in any way aside from your testimony that he came to the farm on the 14th?

A. Because that was the day as I recall.

Q. Your testimony?

A. My testimony is that that was the day that I left with him and that's the day I drove out, up to Bonnie & Clyde's and drove him back to the car with his turkey.

Q. All we are trying to point out after all this time is this record means, which first of all begins showing nothing on the 14th. Right?

A. That's correct.

Q. The record therefore is meaningless in terms of your recollection?

A. Right.

Q. All you're saying to us is I think he was out there the same day as Marsha, that's your girl friend?

A. That's correct.

Q. Got in the fight with Jimmie. That's correct?

Q. And I remember that happening the day before the wedding?

A. That's correct.

Q. And therefore it must have been the 14th. Right?

A. The wedding was on the 15th and the the 14th would be the day before, yes, sir.

Q. Therefore, since that's the day I think it was and since it's blank, I guess it's the wrong date in the book?

A. Could have been --

Q. Is my logic --

A. That's right. It was in there and it looks, happened to be on the wrong side of the page, there's nothing on the 14th. I know that we were in the office that day, so it's logical it was on that day.

Q. I take it --

A. It could have been another day. That was the day I made no notation --

Q. Is there a question pending?

A. Pardon?

Q. Is there a question pending?

A. No, not that I know of.

Q. Wait for one. Thank you.

I take it you're aware, are you not, there were other days that you indicated that days on which Mr. Ingram and Mr. Nixon may have been at your office?

A. That's correct.

Q. By the way, even on this notation, when you see two notations in a row, on this book, am I correct, there are many times you have, I see three in a row on the eleventh. Right?

A. Where are you?

Q. I see three names in row, 4:30, 4:45, 5 o'clock?

A. Right.

Q. 4 o'clock, 4:15 are the ones you talked about --

A. I don't --

Q. It's right here.

A. Yeah.

Q. I could go through. There will be six in a row. Right?

A. Yeah.

Q. Doesn't mean they were together, does it?

A. Doesn't mean that.

Q. What you're doing, you saw the two names on the same day but you will look there were other days --

A. Could have been another day. Mr. Pawer, so there will be no misunderstanding, I have been asked what day I thought and what is my best recollection and my best recollection is on the 14th and I explained to you why. It could have been another day.

Q. Okay. But you see, sir, so you understand, I don't want to be, I don't want you to be misunderstanding what I'm saying, I'm suggesting to you, --

A. Okay.

Q. -- sir, That it really happened in 1983?

A. Could have but I don't believe it.

Q. That's --

A. It was prior to when I passed it to the file.

Q. I understand that. It's my suggestion you're lying about it, sir. I just want you to understand, I think you're doing that. We are dealing with why you said it was May 14.

A. Okay.

Q. I didn't want anyone in the courtroom, particularly the jury, to think I was tryiing to trick you into something. I suggest this happened in March of 1983. Okay? Now you just told us that it could well have happened in 83. You don't think so?

A. Mr. Fawer, so there will be no misunderstanding, it happened prior to the passing to the file.

Q. I heard you?

A. Okay.

Q. But you also have gone on the record in telling us, you have gone to the Grand Jury and gone through this story that it happened on May 14. Now you seem to be moving off, this is an anchor for that story, this being Government's Exhibit 20?

A. That merely verifies and identifies exactly what I said.

Q. Okay.

A. The day before Gary Turner's wedding.

Q. But the other things we need to look to, to try to help ourselves with, the logic of events would be helpful. Correct?

A. All right.

Q. And, as I understand it, you told us earlier today, nothing is going on in May of 1982 to upset Wiley Fairchild. Is that true, May of 82, talked to you this morning, his son is in the hospital with back problems. Okay? No problem?

A. Shouldn't be. Not that I know of.

Q. May of 83, different story. Right?

A. After I passed the file and took it out, okay.

Q. A lot of problems then. Angry Mr. Fairchild on your hands?

A. Never expressed it to me.

Q. You heard about it on the street?

A. No, I can't remember I did. Carroll never mentioned it to me.

Q. Wiley's told us about it. Okay?

A. When?

Q. Yesterday.

A. Well, I didn't hear that.

Q. Well, I know that you weren't allowed in the courtroom. In any event from 6 and 8 those Government's Exhibits there's reason for him to be upset about the publicity in 1983. Okay?

A. I would think so.

Q. That's the logic of those events. Okay?

A. Okay.

Q. So we have the logic of those events. Nothing going on in May of 1982?

A. Right.

Q. We have however, we have got this calendar, looks like it has some information on it, points you in a direction but you also told us that it didn't seem to you that you never heard that Judge Nixon making a trip from Biloxi just to run up there and come back to the coast? Right --

MR. FAWER: Bear with me a moment.

(Pause.)

BY MR. FAWER:

Q. Am I correct that's what you testified to a little bit earlier this afternoon?

A. I believe that's correct, yes, sir.

Q. Have you ever heard of the asbestos cases?

A. You talking about the groups of asbestos cases?

Q. Yeah.

A. Yes, sir.

Q. There was one main case, in fact it was just affirmed by the Fifth Circuit en banc this last week. You heard about it?

A. I heard there were a large number of asbestos cases that were tried up there, right.

Q. The lead case was tried before what federal judge?

A. I don't know.

Q. Excuse me. It's pointed out it was the only one that was tried, down in Biloxi. Do you recall anything about it?

A. I remember when one was tried, I was trying to think who the attorney was.

Q. Danny Cupit? Which side would you like?

A. Okay. I think Danny Cupit tried it, as I recall, I believe he got a very, very large verdict.

Q. Right.

A. And I believe it was tried in front of Judge Nixon.

Q. Judge Roper was the magistrate working with him. Right?

A. I'm not familiar.

Q. Roy Williams the attorney on the other side?

A. Could have been. I mean I wasn't involved in it.

Q. Jury selection began on Wednesday, May eleven?

A. All right, sir.

Q. It continued, excuse me, May 12?

A. Okay. It continued through May 13.

A. Okay.

Q. And on May 14, there were motions that day, full morning before Judge Nixon?

A. Okay.

Q. Let me show you the records, just so that you don't have any problem with what I'm saying to you is -- Let me show you, you have seen what docket records are in the court?

A. Sure.

Q. These are those from the asbestos case.

A. All right.

Q. Sure enough, there's Danny Cupit and Roy Williams?

A. All right.

Q. The defendant was Johns Manville. Right?

A. Right.

Q. I'm showing you the 13th but that's the day there was jury selection, but you can look through it and find it yourself.

A. Right.

Q. But then we come to May 14. See that day?

Q. Then we come to the May 14th, see that date.

A. Okay.

Q. Motions, before whom?

A. Judge Walter Nixon.

Q. Judge who?

A. Judge Walter L. Nixon.

Q. Motions, before Judge Nixon, motions before Judge Nixon, motions before Judge Nixon. Motions, before Judge Nixon, in fact a listing of all the motions to be heard that day before Judge Nixon, eleven in number?

A. All right.

Q. That doesn't mean he couldn't have, of course. You'll accept the fact these records reflect he was in Biloxi on May 14th?

A. He's a very, very hard working man. If you say he's down there, that's what the record reflects.

Q. You would agree therefore it would be unlikely, you've never heard of him going to Biloxi to Hattiesburg and going back in the same day, he would have done that on a day he was in Biloxi that day?

A. Very, very unlikely.

Q. He can't be in two places at the same time, right?

A. I would agree with that.

Q. As hard working as he is, couldn't be there, right?

A. I'll agree with that.

Q. Okay. So we got some problems with the May 14th date?

A. Might not have been May 14th.

Q. Maybe a good day, except wrong year.

A. No, sir, it wouldn't be the wrong year, it was the day before Gary Turner --

Q. Okay, stay with it, without -- if it's not 1982, then your story is a fabrication?

A. It's not a fabrication.

Q. I hear you. But we know for a fact, at least we're fairly confident, didn't happen on May 14, 1982.

A. No, sir, I'm not.

Q. You're not confident?

A. No.

Q. You need more evidence than that?

A. No, you showed me a document where we had motions, he and Judge Roper. I don't know what time he left, what time he got through, who he left them with. I'm not trying to say, if Judge Hixon says he wasn't here, I'll take his word, he wasn't here.

Q. Anything you want. From what I understand, your thesis would have to be, if we can physically place him in Biloxi -- how long does it take, two hours, hour and a half?

A. Hour and a half.

Q. We have to have him leaving this morning full of hearings, running up to Hattiesburg to see Wiley Fairchild, calling you, coming over there, going over to the farm, over there to the DA's office, going to the farm, going to Bonnie and Clyde's and coming home, right. Have to have that done, according to you?

A. That's correct.

Q. From what you tell us, you have never known him to run up from Biloxi and Hattiesburg and go back the same day like that, you told us that earlier.

A. He don't have court up here, Mr. Fawer, come up and hold court.

Q. He didn't hold court here that day, you know that?

A. No, he didn't hold court that day. What I'm saying, I've run down there a number of times and run back. What I'm saying, I don't know whether it's that day or the other, I've been saying all along it is my opinion that was the day, it could have been a different date.

Q. Okay. Doesn't satisfy you, let's see what else we've got, right. Okay?

A. Okay.

Q. I guess there have been times, aside from when you were testifying before the grand jury -- let's understand something. When you went on the 21st, you never said a word about the passing the case to the files, you never said there was anything said such as that in this phone conversation. You told us you lied at that time, covered up?

A. Yes, sir, I was covering it up.

Q. Just so the jury understands, covering up, is that a polite way of saying lying?

A. Interpret it.

Q. I would like to know what you want to call it. A lot of times you don't remember the whole truth? You didn't remember the whole truth?

A. That's correct.

Q. Okay. That's the best you can do we'll stay with it. In any event, you were sitting there with twenty people in a room, you were on your guard as to what you were saying, right?

A. That's correct.

Q. June 28th, you were on your guard again when you go back to the grand jury?

A. Right.

Q. Telling the story then, right?

A. A little.

A. Right.

Q. A little more relaxed, you know you've made an agreement with the government, got a quid pro quo working, right?

A. Right.

Q. But there are other times when you sort of relax, sit around, have a drink, talk to your friends, right?

A. Right.

Q. You laugh with people, get on the phone. You do have telephonitis, don't you?

A. I guess.

Q. You talk a lot on the phone?

A. Yes.

Q. When they invented that portable phone, they could have named it after you?

A. I guess so.

Q. But you know a man by the name of Paul McMullan, right?

A. Right.

Q. And sometime in July of 85, you go to the grand jury, sitting around and he's, he was involved in some proceeding or something, and you're at the farm I think and he calls you or you call him?

A. He called me.

Q. Yeah. And you're having a conversation, just a rambling time of conversation, right?

A. Right.

Q. And in the course of it, you get around to, you're talking about the fact you just came out of here, namely to the farm, right, I just came out here, to the scene of the crime, that's where the terrible telephone call took place, remember that?

A. Yes.

Q. McMullan, why, out at my farm. He says, pardon me, he says oh, shit, God Damn, you're laughing, the two of you, do you remember that?

A. I remember it.

Q. What did you say next, do you remember? Any recollection?

A. About the phone call?

Q. Yeah?

A. I told him --

Q. Excuse me. What did you say to McMullan then, if you recall?

A. I recall it. Well, I've seen it, it was furnished to me.

Q. Oh, then you know about it?

A. Right.

Q. You said it was the scene of the crime, horrible crime, God damn, two drunks call up somebody, all they got to do is see to the agreement had been worked out a year earlier takes place and God damn, the next thing you know every son of a bitch is bad? Is that -- Should we listen to it? Let's listen to it.

A. What's on there.

Q. Let's listen anyway. We haven't listened in a couple of days.

A. To be frank, that's exactly the way I feel about that telephone call.

Q. Let's look at the language you used in it, do you remember the words?

A. It's ugly, it's very foul.

Q. You're saying, see this agreement had been worked out a year earlier takes place, Mr. Holmes, that was your language then in an unguarded moment?

A. What was the date of that?

Q. Listen to what you're, July of 1975, 85 is when you are, when this call takes place. But you're describing to McMullan what that call was all about, what the incident, and had to do with, what was the agreement you had made, the agreement with Porter?

A. That's correct, Bill Porter.

Q. Had been worked out a year earlier?

A. That's correct.

Q. Okay. When was your agreement worked out?

A. With Bill Porter it was worked out.

Q. January 12, 1982?

A. That's correct, that's the day he pled, that's correct.

Q. What would be a year later? What would be a year later, what year would you be in?

A. Naturally a year later, if you want to be it in chronological order, January of 83.

Q. Let me hear the year again?

A. Pardon.

Q. What year?

A. If it's a year earlier, then naturally it would have to have been 1983.

Q. Okay. I guess we really don't need to play it after all, do we?

A. Play it if you want to, because I think I'll have an opportunity to explain it.

Q. You told McMullan?

A. Right.

Q. You're not under oath at the time, sitting around at your farm, laughingly referred to as the scene of the crime?

A. Right.

Q. You're making -- look, we understand, you've always been of a position, nobody argued about it, the call was the most insignificant thing in your life, meaningless thing in Judge Nixon's life, Wiley Fairchild's life, everybody, right?

A. That phone call, Mr. Fawer, was the most insignificant thing that we made that night. Nobody intended anything, they have taken and blown this thing into where we are right now.

Q. Here you are chatting with McMullan, two good friends, right?

A. Right.

Q. I guess, did you tape that call?

A. No, sir.

Q. Send McMullan my thanks for doing it for us.

A. Okay.

Q. He tapes a call you're not aware of, you're not going by any script, you don't know he's taping it, you mention what this whole telephone incident is about, and you're saying, hey, two drunks who happen to make a phone call concerning an agreement from the year before, a year earlier.

A. That was a figure of speech.

Q. Figure of speech?

A. Well --

Q. Okay. We'll live with it.

A. Okay.

Q. A figure of speech. But there is no question that when you talked to McMullan you described the plea agreement with Porter as having been a year old at the time of the phone call between yourself, Nixon and Fairchild, correct?

A. I think I was explaining the --

Q. Answer my question. I'll give you a chance to explain.

A. All right.

Q. Is it fair to say when you talked to McMullan, you described the plea agreement as having been entered into a year before the telephone call between yourself, Judge Nixon, and Wiley Fairchild?

A. That's correct.

Q. Thank you. Have anything to say?

A. No, sir.

Q. Thank you. So now we have a few extra facts to help us date this call, right, even from the lips of the person who is party to it, right, you?

A. Which phone call you talking about, the McMullan --

Q. No longer McMullan -- so we all understand. The jury is bright enough, sharp enough to know the McMullan call simply is a call that you were having with another man, talking about this incident. They are not confused, okay?

A. Okay.

Q. You were referring, you chose to bring up the phone call.

A. What I'm, the question I asked you, if I may, when you asked about the phone call, I don't know which of the phone calls you were referring to.

Q. Fine, you now understand?

A. Yes.

Q. Now we have a few extra facts. The book isn't of much value, we know Judge Nixon for the most part May 14 of 1982 is down in Biloxi, we know that there is nothing going on in May of 82 to excite Wiley Fairchild, but there is plenty going on in early 83 to excite him, correct?

A. That would be correct.

Q. We have your reference to the fact that this conversation took place in 83, when in an unguarded moment you mentioned it to McMullan, correct?

A. That's correct.

Q. Thank you. Now let's go on.

A. Okay.

Q. As I understand it -- by the way, there is something I wanted to ask you. Do you recall, when this call took place, wasn't the judge coming out, not to pick up a turkey, but to pick up some Hang Williams records that you had?

A. That could have been the case.

Q. You remember, let me show you. Whole stack of them, you have a lot of Hank Williams records, right?

A. Right.

Q. He hasn't returned them to you yet. He still happened to have them. These your records?

A. Right.

Q. Do you remember him stopping by your house to pick them up?

A. Right.

Q. Do you remember him being in, I'm not sure you remember the precise date, do you remember he used to hold court up here, still does, in Hattiesburg, correct?

A. Right.

Q. And you remember when he picked these up?

A. No, sir.

Q. Do you recall that it was around early March of 1983 when he was here in court in Hattiesburg?

A. Whatever day it was, I don't --

Q. You don't have any recollection?

A. No, sir.

Q. You do remember him coming out, sat around, had a few drinks, right?

A. Yes.

Q. Listened to some records?

A. Right.

Q. He wanted to make -- he wanted to make tape recordings of them, right?

A. Right.

Q. You were listening to some records at the farm, right?

A. Right.

Q. Just two friends drinking, right? Does that refresh your recollection as to when this incident came up?

A. No, sir.

Q. Doesn't help you at all?

A. No, sir.

Q. What's the next number? 31? As I understand it, it's your testimony that you have this lengthy conversation with him, I say lengthy. How long does it take to get out to the farm?

A. About ten, twelve minutes.

Q. And it was during that period of time that he was supposed to have told you that he had been out to Wiley Fairchild's?

A. Mentioned to me, yes, sir.

Q. You knew that already because you said he called you from there. Did he or didn't he?

A. It's my understanding that that's where he called from.

Q. You said --

A. Mr. Fawer, let me retract on that. It was my understanding right then when we were talking about it just now that he probably called before he came out, that would be his normal way of doing.

Q. No, I have a problem, Mr. Holmes.

A. Okay.

Q. I am hopeful you're trying, when you tell us things under oath, that you've either given them some thought or if you haven't you say to us you haven't. You said to us under oath before he called from Wiley's?

A. Yes.

Q. Remember we went around the horn on that.

A. Let me retract -- let's just say he didn't call.

Q. If we say that, see, if we retract it, we have to deal with why you said it the first time.

A. Because that was what I remember.

Q. And that was about three hours ago. Right?

A. Right.

Q. And that doesn't seem to be your recollection three hours later?

A. If it's important,.

Q. Everything's important that you say on that witness stand.

A. All right, sir.

Q. At least to this man, it is.

A. Sure.

Q. So what you're telling us now he didn't differ from you there, he told you that he had been there in the car. Right?

A. Told me the only, what I can say is he had been to Wiley's and Wiley mentioned it to him.

Q. Okay. And that Wiley had asked me, didn't want to do anything, didn't want to embarrass you, didn't want to do all these things?

A. That's true.

Q. But Wiley wanted him to put in a good word with you. Right?

A. That's right.

Q. Let's stop there a minute. You read Wiley's testimony. Right?

A. Just now, right.

Q. You read it before. You said just now this isn't the first time you read it?

A. I'm sure I read it six or eight months ago, I don't remember recall it verbatim.

Q. You sat and read it, you were under oath, you read it?

A. Sure, six or eight months ago. I can't recall what was in it.

Q. Sure, but I'm going to take you to it right now. Do you recall what Wiley said, listen to what Wiley said, Wiley was complaining, Wiley was complaining that a certain DA was shaking him down, was blackmailing him. You remember that?

A. Yes, sir.

Q. The name of the DA was Bud Holmes?

A. That's correct.

Q. He even said to the judge that he thought maybe even Ingram was in on it. Right?

A. I believe that was in the testimony.

Q. And that he said he wasn't looking for anything for Drew, he didn't have any problem with what was going on Drew's case, but he couldn't understand why Bob Royals hadn't been indicted?

A. I really don't remember that, but if you say it's in there, I'm sure it is.

Q. He has come and said it yesterday?

A. Okay.

Q. And then it's your testimony that what the Judge did was come out -- By the way, you had already made a deal. Right?

You already had a deal with Drew?

A. Oh, yes. That was cut in, let's say, January, I guess of 82.

Q. Okay. And it's your testimony what the Judge does is go from that meeting to riding out in the car with you and asking you, or telling you that Wiley's asked him to put in a good word for Drew. Right?

A. Right.

Q. Now have you heard or read anything that Wiley has said where he was asking for good word to be put in?

MR. WEINGARTEN: Objection, Your Honor, what's the relevance of that, whether or not Bud Holmes read Wiley.

MR. FAWER: Wait a minute. He read over his testimony before he went to the Grand Jury, Judge. I have a right to question the logic and the inconsistency between his testimony and what he read, the other party to this conversation said.

MR. WEINGARTEN: Your Honor, whether or not Bud Holmes' opinion that his version is logical with Wiley Fairchild's version is completely irrelevant.

THE COURT: I'll sustain the objection.

MR. FAWER: Fine, Judge.

BY MR. FAWER:

Q. In any event, this is what you say the Judge said. Right?

A. Right.

Q. Of course you had nothing of this sort to say when you went to the Grand Jury in July because the phone call was not even something you were thinking about, right, in July of 1984, first appearance?

A. Yes, sir, it was in the back of my mind.

Q. You never said a word about it?

A. Did not say a word about it.

Q. September, continuation of the first time, nothing said?

A. Did not.

Q. February you go there, you mention the phone call but there's never any suggestion of anything of this sort that the Judge is saying to you?

A. No, sir.

Q. It's not until after the plea agreement, the reading of the testimony, the reduced charge that suddenly, the clarity starts, I mean this mind just, all the haziness that you were telling the Grand Jury about, I mean those clouds just lifted away. Right?

A. Yes, sir.

Q. I mean, this plea agreement, this is better than a tying of all three, I mean it just knocks out the clouds, everything is clear to you. Right?

A. Mr. Fawer, I was sick and tired of trying to cover up. I just told the truth on it.

Q. In any event, the rest of it, your testimony is you're going out and you get to the farm and the Judge isn't asking you to do anything but what you're saying is, hey, I'm DA, I can do anything I want. Correct?

A. That's correct.

Q. I'll pass it to the files?

A. That's right. Exactly what I did.

Q. I mean, passing it to the files, which you know and everybody else in the world knows, except maybe Wiley Fairchild, has about as much meaning as my banging it against this next desk. It has no meaning. Is that right?

A. That's right.

Q. Oh, I'll pass it to the files, I'll do you a big favor, Judge. Right? You're kidding him. You will be doing him a favor for a Judge by doing a meaningless act?

A. 90 percent of the times as you well know when you pass something --

Q. Excuse me. You want to attribute something to me?

A. Are you asking a question --

Q. I asked a question.

A. -- or badgering me?

Q. I'm badgering you?

A. Yes.

Q. Please, at any time you feel badgered, say so.

A. Okay.

Q. Raise your right hand.

A. Okay.

Q. Okay. Go ahead?

A. Passing it to the file in practically every instance means it will go in the inactive file and they're very, very rarely brought out.

Q. Most of the times when you pass a case to the file, as you say I know, you pass it and use it as a deferred prosecution mechanism. Right?

A. No, sir.

Q. It's before sentencing, before conviction or before plea?

A. Most every time that we pass them to the files here it's very rarely brought back out.

Q. Did you hear what I said? 99 times out of a hundred when you pass a case to the files, --

A. Hm-hm.

Q. -- you pass it before there's been a plea?

A. That is correct.

Q. Okay. You do it because you charged somebody and you in effect say if they keep their nose clean for a period of time while it's on the inactive status, we'll let it go at that?

A. That's right.

Q. All right.

A. You have different reasons why you pass it.

Q. Here you have another reason, Porter was yelling about it. Correct?

A. That's correct.

Q. You had the rule 6 problem with going ahead with the sentencing in a reasonable time?

A. That was a problem.

Q. Okay. In any event let's come back to the conversation. From what I understand from you, let me just get your testimony in so we'll have it down. You then go inside, and while you're inside, you have a drink, and you say it's Judge Nixon who then says is it okay for me to call Wiley. Right?

A. Right.

Q. As between the two of you, to come down to personalities, I mean you most likely spend five hundred times as much time on the phone as Judge Nixon, you're the one with telephonitis. Right?

A. That's what they say.

Q. It's not what they say, it's what you know about yourself. Right? You reach for a phone as fast as anything. Right?

A. Yeah, I'm pretty quick on it.

Q. All right. But it's your testimony you didn't call Wiley?

A. That's correct.

Q. But as you have always told everybody, even when you were covering up, you had been drinking that night. Right?

A. That's true.

Q. No matter what else happened, you were drinking at the office?

A. Right.

Q. Right?

A. (Nods yes.) That's correct.

Q. You were drinking at the house?

A. Right.

Q. And your recollection of events is not very good. Right?

A. It's fairly accurate, yes.

Q. But I'm saying you did have some drinks?

A. That's right.

Q. I don't know how many. You went to the Grand Jury and kept saying, you know, I was drunk. You even said it when you're talking to McMullen?

A. That's correct.

Q. After, after your plea agreement?

A. That's right.

Q. After your Grand Jury appearance?

A. That's right.

Q. You're saying two drunks. Who are the two drunks?

A. the Judge and me.

Q. I mean a drunk isn't somebody, you're not exactly, your memory is not as good when you're drunk or about the period of time while you're drunk. Is that correct?

A. That's right. If we hadn't been drinking probably wouldn't have made the call.

Q. Nobody's quarreling about the call being made, there's no issue about the fact, we all know the call was made.

A. Okay.

Q. Have you heard anybody say it wasn't in this courtroom?

MR. WEINGARTEN: Objection. What's the point of that?

BY MR. FAWER:

Q. In any event, next question, you now tell us that what the Judge was saying is that he calls Wiley, and he tells him that you're going to help him with the problem. Right?

A. That's correct.

Q. Okay?

A. (Nods yes.)

Q. And that he then goes on and there's this discussion. Is the Judge supposed to be talking to Wiley and -- Do you know what poetic license is?

A. No.

Q. Well, you're good at it. the Judge is now talking about, on the phone to Wiley, his children's situation, that he had a difficult time making it, that he needed outside investments, that he appreciated the opportunity to be associated with Wiley. You have him saying, I mean he is going, told me today, tell me the whole, I mean he said something about -- He's mentioned already about Drew, according to you?

A. Right.

Q. I talked to the man and everything's going to be fine, he's going to help your boy?

A. Right.

Q. Right?

A. That's correct.

Q. Now we have a conversation, ostensibly between a man who's had some drinks and Wiley. By the way have you ever heard or ever read of Wiley testifying anyplace to any of the rest of this conversation that you now put in it?

MR. WEINGARTEN: We respectfully object.

THE WITNESS:

A. I don't recall.

BY MR. FAWER:

Q. What?

A. I don't remember reading it, no.

Q. Tell us the rest of it. Let me hear the dialogue that's coming from the Judge in this phone call. Explain it.

A. You want it?

Q. Sure.

A. Okay. The Judge told him, he said, Mr. Fairchild, this is Walter. I just want to tell you that the man we were talking about today, I'm out at his farm, talked with him, and he tells me that everything is going to be all right with your boy. That your boy is not going to go, I believe his words to this, this is the essence of it now, I didn't write it down, I don't have a transcript of what was said, I'll tell you what my best recollection of what was said.

Q. I just want you to understand something, --

A. Okay.

Q. -- from this point forward, it's new. It wasn't said earlier today and it wasn't said by you in July.

A. Okay.

Q. But feel free to add anything you want.

A. No, I don't need to.

Q. Go ahead. You had some more you were coming up with. Come on.

A. That was it. And I asked him --

Q. Something about the boy, you started to add something. Let me hear it. Go on.

A. Let's rehear it.

Q. I'm sorry to interrupt. You're better with the free flow. What was the next sentence supposed to have come from Judge Nixon?

A. The Judge told him he had a conversation with me.

Q. Go ahead.

A. Okay. And that he had told me everything was going to be all right.

Q. You said that. Go on. Try to move beyond that.

A. That was the sum and substance of that.

Q. What about the children? Come on.

A. Okay. He thanked him for allowing him to make these investments with him.

Q. Go ahead.

A. That he appreciated the opportunity.

Q. Go ahead.

A. That he enjoyed the association with him.

Q. Go ahead.

A. And that he was having a hard time or that it's kind of hard getting by.

Q. Go ahead.

A. On the limited income that he had with the expenses that he had and he appreciated it.

Q. This is all said in that phone conversation?

A. Yes, sir, that was basically the way the concept went.

Q. You already told us you never saw why Wiley ever said that was said in that phone call?

A. I have no idea what Wiley said.

Q. Now you did however -- In Wiley's testimony read where Wiley had met Judge Nixon back in 1982. Correct?

A. (No response.)

Q. At the time of the mineral investment -- Do you remember that? You read his testimony about it.

A. Okay.

Q. And the things you are saying are the things that Wiley described as having been said in connection with the mineral investment. Correct?

A. Correct.

Q. But you now have Wiley, you now say that the Judge in this conversation, you have conveniently added all this into that conversation as well. Right?

A. No, sir, I added what I remember.

Q. Just remembered it for the first time in June of 1985. Right?

A. No, sir, I remember it all the way through.

Q. First time you ever said it before the Grand Jury?

A. Before the Grand Jury.

Q. Right after, shortly after you had been reading Wiley's Grand Jury testimony?

A. Had nothing to do with it.

Q. Had you just read within the last months testimony?

A. I'm sure that would have been true.

Q. Had you between the time of his testimony cut your deal with the government?

A. No, sir.

Q. I beg your pardon, between the reading of the testimony on June 28th?

A. Sure I had, it's the date, right.

Q. You had cut your deal?

A. Right.

Q. Reduced your exposure from twenty-five years to one year?

A. Well, that would be obvious, yes.

Q. Obvious. Let's make --

A. That's the maximum, yes. True.

Q. And then you got on the phone, correct?

A. Right.

Q. And what was it that you had to say?

A. Told him, I said, told Mr. Fairchild that I hoped he didn't think anything was personal about his boy, and told him that Judge Nixon had mentioned the situation to me and that I would see to it. I believe I told him I was going to pass it to the files.

Q. You just believe that you said that this time?

A. Yes, sir, what I told him. I told him I was going to pass it to the files.

Q. Was that a slip of the tongue when you said believe?

A. I don't have a tape recording to do it, that's my rememorance of what I said.

Q. I understand. Of course, that only makes sense if that occurred in 1982, right?

A. Right.

Q. If the event, if the meeting, excuse me, the telephone call occurred in 1983, it would have been inconceivable you could have said anything about passing it to the files, right?

A. That's correct.

Q. It would be to put it mildly, be a lie?

A. Yes, if I said that I told him after I had passed it to files, was going to be passed to the file, it would be a lie.

Q. It not only would be a lie, it would be a lie to save yourself at the expense of a friend?

A. No, sir.

Q. That's what it would be if the conversation took place in 83, right?

A. Mr. Fawer --

Q. Am I correct, sir?

A. Well, if your assumptions --

Q. If it occurred in 83, then you're not only lying, but you're condemning yourself to being sold out at the expense of, selling your friend out to save yourself, correct?

A. Mr. Fawer, I'll --
Q. Is that correct?
A. If what you say, if the scenario you paint were true, what you're saying would be accurate. I come up here to tell the truth, I am telling the truth, which ever way it goes, it will just have to go. I'm going to truth -- going to tell the truth today.
Q. You've lied before under oath, right?
A. I did.
Q. It's not your first time?
A. Well --
Q. It's not?
A. Won't happen again.
Q. You've lied under oath before, right?
A. In the grand jury. I was indicted for perjury.
Q. You have by your own admission misused your office, have you not?
A. I don't call it misusing it.
Q. Disgraced it, wasn't that term you agreed to this morning?
A. Disgraced, where?
Q. When you --
A. When?
Q. How about making the call to Porter for your friend's fee?
A. Oh, that --
Q. Do you recall that?

A. We got somebody, indicted him and brought some smugglers, indicted and got them to plead guilty.

Q. That was no misuse of your office?

A. Certainly not, I brought him in, I was going to bring him in after I talked to George, if the man wasn't guilty I wouldn't have indicted him.

Q. It was something as you told us primarily Bill Porter --

A. Excuse me?

Q. Primarily to get Bill Porter his fee?

A. Put it in any category you want to, the reason the thing got initiated was to help Bill, but if the man hadn't been guilty I certainly wouldn't have done it.

Q. I guess it's fair to say the people of Forest County elected you for one of your functions is to see if you could help a friend collect a fee?

A. I don't think that was in the campaign, no, sir.

Q. May not have been expressed in the campaign, but you should have told them that's what you had in your mind?

A. You're entitled to your opinion.

Q. I guess I am. You're the one who did what you said you did. In any event, moving on, do you recall anything being -- was there anything said to you on that occasion by the judge about Wiley accusing you of blackmail?

A. No, sir.

Q. Did he ever mention that to you?

A. No, sir.

Q. Do you ever remember accusing, I say accusing. Saying to Wiley, saying to the judge that Wiley was paranoid?

A. Mr. Fawer, if I did, I said it after the investigation started, during a conversation.

Q. I'm not talking about the investigation. Talking about, in all fairness, before the investigation?

A. No, sir.

Q. Do you recall ever saying Wiley thinks everybody is after his money?

A. No, sir. After the investigation started?

Q. I keep saying to you, I'm not talking about after the investigation.

A. No, sir, I don't remember.

Q. Then say no, that's all you have to do.

A. I thought I could answer the question.

Q. You can.

A. No.

Q. I asked you if something was said, calls for a yes or no. If you want to explain something, fine.

A. Thank you. Fine.

Q. Thank you. Do you have anything to explain?

A. No.

Q. Thank you. You had at the time of this conversation, if it was 82 or 83, you had a plea agreement, nobody was reaching to do anything to the son, right?

A. That's correct.

Q. It was a sweet deal, there was nothing in fact, do I understand, regardless of when this took place, the judge asked you not to do -- wasn't a single thing he asked you to do?

A. He did not verbally ask me to do anything affirmatively for Drew Fairchild or for Wiley Fairchild. He merely said he wanted to put in a good word, merely asking of it, that caused enough influence on me to go ahead and do what I did. I was trying to make him look like a hero.

Q. I asked you a simple question, I got a lecture from you.

MR. WEINGARTEN: We object to that.

MR. FAWER: I did.

MR. WEINGARTEN: You don't have to lecture this witness. You can ask him questions and he can answer them.

MR. FAWER: That's what I'm trying to do.

MR. WEINGARTEN: Well don't lecture.

MR. FAWER: Do you have a robe on today?

MR. WEINGARTEN: I object.

MR. FAWER: That's different. I suggest it's a perfectly proper question.

THE COURT: It what?

MR. FAWER: That, I will withdraw it and ask the next one.

MR. WEINGARTEN: Your Honor, Mr. Fawer doesn't need to give lectures.

MR. FAWER: You want to make one, Reid?

MR. WEINGARTEN: I want to make an objection, I think I have every right to do it, and I've just made one.

THE COURT: Well, I admit Mr. Weingarten is right.

MR. FAWER: I withdraw the question.

THE COURT: Wait a minute. I've let you lecture to the jury, do everything under the shining son.

MR. FAWER: Lecture the jury?

THE COURT: Yes.

MR. FAWER: That's in opening.

THE COURT: Except ask your question. We're getting closer to the end of this trial, and otherwise I'd start cutting you short as possible. Now, let's go ahead and get through with this witness, and ask direct questions, and move on to the next question.

MR. FAWER: With all due respect, just what difficulty -- what I was complaing about was getting a non-responsive answer. That's what began this.

THE COURT: Move along.

BY MR. FAWER:

Q. Okay. Sir, at no time, am I correct, did Judge Nixon ever ask you to do a single thing for Drew Fairchild, right?

A. To the contrary, he told me --

Q. No, sir.

MR. FAWER: You see the problem I'm having. I have --

MR. WEINGARTEN: He's entitled to answer it.

MR. FAWER: As soon as I'm finished speaking, you can. I'm simply doing just what you asked me to do, ask a question, answerable by a yes or no. Instead there is a lecture coming. All I would like, some guidance from the Court to the witness to just answer.

MR. WEINGARTEN: Your Honor, the witness is not obligated to answer Mr. Fawer's questions yes or no. He may answer them as he sees fit.

MR. FAWER: So long as it's responsive.

THE COURT: Let him answer in his way. If you don't like the answer, then you can ask it another way.

MR. FAWER: That's what I was doing, Judge.

THE COURT: All right.

BY MR. FAWER:

Q. Is it not a fact, let me say this, this calls for a yes or no answer, okay. Is it not a fact that at no time did Judge Nixon ever ask you to do anything for Drew Fairchild, is that true?

A. That is verbally correct.

Q. Okay.

A. May I explain.

Q. Can you explain it?

A. Explain my answer.

Q. You want to tell us what you understood to be said?

A. Right.

Q. I'm going to come to that, okay. Did he ever ask you to do anything for Wiley Fairchild?

A. Did not.

Q. Okay. Now, is it true that you then pressed him, according to you, what do you want me to do? Would you like me to pass to it the files, and the more he said no, the more you said I'm DA, I can do what I want. That's your testimony?

A. That's correct.

Q. Am I right?

A. That's correct.

Q. Are you telling us that with when he said I don't want you to do anything, you took that to mean, I want you to do something?

A. Well -- may I explain it to you?

Q. I just asked you, didn't I? Go ahead.

A. You want a yes or no?

Q. Anyway you want, whatever, you are comfortable with the long answers, go ahead.

A. Mr. Fairchild said he wanted to put in a good word. Assume by that that what the judge was doing was trying to ingratiate himself to Wiley by bringing the message to me. Then he asked me to not to do anything that would be embarrassing, against my oath of office.

Q. According to you, not to him, but to you, he keeps saying, I don't want you to do anything, I don't want you to do anything. You're the one who keeps interpreting this saying, he wants me to do something, he wants me to do something, right?

A. Right.

Q. Then what you turn around, according to your testimony and do, is an absolutely meaningless act, pass the case, I'll pass the case to the files, right?

A. Obviously it wasn't meaningful.

Q. What I'm saying, what you're telling us you agreed, because you want to do what he says, you then do something absolutely meaningless. You agree to do something meaningless?

A. Not meaningless to pass something to the files, no.

Q. You told us what it means is, it's off in limbo, can be brought back any time?

A. Could be. And it was.

Q. This is in May you're telling us, according to you it's May of 82, correct?

A. That's correct.

Q. Here you are, when this man talks you listen, right?

A. That's right.

Q. I think there is some sort of motto, some sort of ad that says when Hutton speaks, but with him, he says, you jump, right?

A. We're friends.

Q. Not just friends, man if he, you call Wiley back and say I want the judge to get credit for this, I'm going to pass it to the files, when this man talks I listen, right?

A. Words to that effect.

Q. You hang up the phone?

A. I assume.

Q. Hang it up, give it -- the phone gets hung up, right?

A. Right.

Q. You have a few drinks, wherever you go, you go to Bonnie and Clyde's, whether or not he goes, that's the end of the scene, right?

A. Right.

Q. It's May 14th, it's dark out, you're going to see a fight that night between two ladies and go to a wedding the next day, right?

A. Right.

Q. Come back to the office, made yourself a promise to a federal judge, right?

A. Right.

Q. May goes on, and do you pass it to the files?

A. No.

Q. June comes on, do you pass it to the file?

A. No.

Q. July, do you pass it to the file?

A. No.

Q. August?

A. No.

Q. I mean, you made a commitment, you're telling this jury you made a commitment in May, then sometime in December you pass it to the files to fill the commitment made in May, that's your testimony?

A. That's correct.

Q. Okay. And that you pass it to the files, which means it's going to normally be dead, right?

A. That's right.

Q. Then you run into court thirty-three days later, say I want it back, right?

A. Right.

Q. Does it dawn on you, my God, how am I going to explain this to the judge. He made a promise, you're making promises, and aren't you going to be putting him in an embarrassing situation. You told him you were passing it to the file, right? That was the promise you made him?

A. I didn't promise Judge Nixon I was going to pass to it the file. I promised Wiley Fairchild I was.

Q. That's who was in the middle of it, Judge Nixon, according to you?

A. I wanted to give him credit.

Q. You wanted to give him credit?

A. That's correct.

Q. Did you say to Judge Nixon, get him on the phone, judge, I got bad news. First of all, did you tell Judge Nixon you had passed it to the files?

A. I don't recall. He had heard my conversation with Wiley.

Q. I'm talking about, did the judge say to you, call you up in May, June, July, August, September, October, November, and say, when is it happening?

A. I told him on the way to the farm I would be glad to pass it to the files.

Q. That's before the phone call?

A. That's correct.

Q. You go to the farm before you have the call?

A. Right.

Q. Then we're, you end of the day, some place around May 14, 7 o'clock May 14, you don't pass it to the files until December 23rd?

A. Uh-huh (yes).

Q. Do you see the judge in between?

A. I'm sure I saw him.

Q. You know you do, your calendar even talks about it.

A. But I didn't discuss it with him.

Q. You held a party for him October 28th, 1982, didn't you?

A. Whatever the date was.

Q. It's October 28. Right?

A. Okay.

Q. I mean you talked to him before you had the party. Right?

A. Sure I did, yes.

Q. At any time did you say, did the Judge ever say to you, hey, when are you going to take care of that commitment?

A. No. Did not.

Q. When you took care of it in December, did you say, I mean, you sent him a copy, did you call him send him a message, say fulfilled my commitment?

A. No.

Q. When you reversed your commitment 30 days later, did you call him to give him some advance word that he may have one unhappy Wiley Fairchild on his hands?

A. No, did not.

Q. And you knew there was going to be some serious, I mean you saw this publicity. Right?

A. Right.

Q. You told us before, when that hit the press you knew you'd have an angry Wiley Fairchild. Right?

A. Right.

Q. Did you say, gee, I better explain to the Judge soften the blow to Wiley?

A. No.

Q. Yet it's your testimony all of this took place back in May, long before of this publicity?

A. That's correct.

Q. I see. Let's talk a little bit more -- let me just understand something. Did you, aside from telling the Judge that you had a plea agreement that you were -- you told the Judge you had a plea agreement with Drew?

A. Oh, with Drew, yes, sir.

Q. Okay?

A. Right.

Q. I'm sorry. You thought for a minute I meant your own plea agreement?

A. Right.

Q. That was well-publicized, yours, wasn't it?

A. Right, it was.

Q. In any event you told the Judge that there had been a plea agreement, right, you were living up to it?

A. I'm sure I did. That's right.

Q. But beyond that, was there any discussion of the case whatsoever, the Drew Fairchild case?

A. No, I never went, no, sir.

Q. Just listen to my question. At no time, isn't it a fact at no time, including that evening, whenever it was, you never discussed the case with the Judge?

A. That's correct.

Q. Okay.

A. Outside of what I've testified to, that's the only discussion.

Q. In December, as I understand it, at the end of December of 1983, and I don't recall whether or not you were questioned about this but I don't think you were on direct, you went out to Wiley Fairchild's house, this is almost a year after you had brought it back from the files, you brought the case back, you were about to go out of office. Right? I said to his house, I meant his office. Excuse me. Okay?

A. Right.

Q. First of, you called Drew because you felt you made a commitment to Bill Porter?

A. Not quite.

Q. Well, you had made a commitment to Bill Porter?

A. Sure.

Q. To accept the plea and there would be no jail term. Right?

A. Right.

Q. You were going out of office and wanted to live up to the agreement because Bill was dead?

A. Yeah.

Q. You mentioned to Drew -- Did you get ahold of Drew?

A. No, sir.

Q. Who did you call?

A. Carroll Ingram.

Q. Mentioned it to him but he said he didn't represent Drew. Right?

A. As I recall it, Carroll told me that he did not represent Drew and that he would call Wiley, maybe Drew, I don't recall, and get back with me.

Q. As far as you know he did get back to you?

A. He did.

Q. He told you Wiley was very upset, he was going to the papers, he was going to talk to Marvin Rueben, a reporter. Is that right?

A. I don't recall that, Mr. Fawer, no. He told me, what I recall of it, Carroll said if you want to get the thing disposed of, you're going to have to talk to Wiley yourself.

Q. Okay. Then you, I thought I recall in your Grand Jury testimony, and correct me if I'm wrong, I may be wrong, that you said you were aware of the fact of Wiley fussing about the fact, you know, about fussing about what you wanted to do?

A. As I recall, Bill -- Carroll Ingram told me that Wiley was either irritated about the money or something, but it didn't appear to be any great big thing. He said if you want to get the thing disposed of, you need to call Wiley yourself and talk to him. Made like he had tried to talk to him or maybe they were on the outs or something to that effect.

Q. You went out there the next morning?

A. The next morning.

Q. You decided to take Dickey McKenzie with you?

A. I wanted somebody to go with me that I thought was real close to the Fairchilds. My understanding was Wiley was a big supporter of his, wanted somebody to go out there and do it, you know, explain it, I mean, called him and took him out there.

Q. All right. If I understand correctly, Wiley, what you did, you told Wiley you were going out of office?

A. That's true.

Q. You had made a commitment to Drew and his attorney?

A. Right.

Q. The attorney was now dead, you wanted, in front of the Judge, to let him know that you're willing to go ahead with this sentencing, even before he testifies in the Watkins case?

A. That's true.

Q. Because Watkins is still a fugitive?

A. That's correct.

Q. And you explained that to Wiley?

A. Right.

Q. Did he seem to appreciate what you were doing?

A. Seemed to.

Q. Didn't seem upset at that point?

A. Not one bit.

Q. He's not somebody who's easy to explain things to sometimes, but he did understand on that occasion?

A. His brother was there and they looked at each other and said do what y'all want to do and Mr. Fairchild said leave it like it is, and I said fine, my conscience is clear.

Q. Did he say to you, well, wait a minute I thought you passed it to the files and that was the end of it?

A. No.

Q. Nothing of that sort said?

A. Did not.

Q. And of course no longer in the inactive files, it was on the docket again?

A. That's true.

Q. Waiting for Watkins?

A. Right.

Q. I appreciate what you're saying, I understand you're going out of office, leave it where it is, we'll get to it in due time?

A. That's right.

Q. There came a point, I guess in early April or sometime in April, when this investigation got underway. Right?

A. Right.

Q. The first thing you heard about it was a call you got from Judge Nixon?

A. That's right.

Q. Was that the home at night?

A. I don't recall.

Q. You know -- Were you aware of the fact that he not only called you after the interview by the prosecutor and the FBI -- You know who Owen Kennedy is?

A. Who?

Q. Mr. Kennedy of the FBI?

A. No.

Q. You know George Phillips?

A. I know George Phillips.

Q. You know Carroll Ingram?

A. I know Carroll Ingram.

Q. Are you aware he called them as well as you?

A. I knew he called Carroll.

Q. You knew he called Carroll?

A. I might have been told he called George. I don't know.

Q. You knew he called George?

A. I do not.

Q. He was incensed about the accusations that had been put on him?

A. Highly incensed.

Q. Excuse me?

A. Highly incensed.

Q. Highly incensed. I'm sorry I didn't understand it. He was basically explaining to you that they were in some way investigating the mineral investment that he was in with Wiley?

A. That's right.

Q. So something about the Drew Fairchild case?

A. That's right.

Q. He was furious, couldn't understand what the accusation was?

A. That's true.

Q. Because they weren't being clear about it?

A. That's right.

Q. He was trying to find out from you if you knew anything about it. Correct?

A. That's correct.

Q. As far as you know, he did the same thing with Carroll Ingram?

A. As far as I know, yes.

Q. Okay. And he told you again he told you, at that time that what he had told them, he had nothing to do with the handling of that case?

A. That's true.

Q. Hadn't spoken to anyone about the case?

A. That's true.

Q. Had no involvement in that case. Right?

A. That's true.

Q. Now as I understand it, you took that to mean that he wanted you to hide this phone conversation?

A. I did.

Q. You never mentioned -- There was no discussion of the phone conversation. Correct?

A. Of course not. He did not --

Q. According to you he said that he had had nothing to do with the handling of the case?

A. That's correct.

Q. And had never talked to anyone about it. Correct?

A. That's correct.

Q. You read that to mean, I mean did you say to him, well, what about the phone call? You didn't say that to him?

A. Did not.

Q. Nothing of that sort?

A. No.

Q. You told us -- Who was about to speak to Carroll himself?

A. That he was.

Q. You told me he spoke to Carroll that same night he spoke to you?

A. I don't know when he spoke to Carroll. It was my understanding he talked to Carroll about the interview.

Q. Either that night or the next day, right about the same time?

A. Right.

Q. It's your testimony he asked you to question Carroll as to whether the call was taped?

A. A couple of days later, yes, sir. I don't think he asked me --

Q. Not in that call?

A. No, sir.

Q. Pardon me?

A. No, sir.

THE COURT: Gentlemen, let's take a short recess.

MR. FAWER: Thank you.

(Recess.)

MR. FAWER: Your Honor, while we're just waiting for Mr. Holmes to take the witness chair again, just can we mark the excerpt of the telephone call of which we had a call between Mr. Holmes and Mr. McMullan, the government and I have agreed, we have an excerpt. I'm not going to play it right now. I want to introduce it as Defendant's Exhibit 32. This is the original excerpt, we may end up with a copy using a tape. The government and I will work out an agreement on that.

THE COURT: Okay.

(Exhibit D-32 marked.)

BY MR. FAWER:

Q. Mr. Holmes, what we were talking about is apparently you say that your recollection now is in this conversation the judge did not mention the taping, that this happened according to you, he asked you to find out from Carroll about whether the call was taped?

A. That's correct.

Q. Carroll was not party to the phone call, right?

A. No, sir.

Q. I'm talking about the call to Wiley Fairchild?

A. No, sir.

Q. And as you now told us, the judge talked directly to Carroll?

A. As far as I know. I wasn't party to that one he did.

Q. I understand that. We're now in April of 1984?

A. Okay, right.

Q. Okay. What you're saying, he asked, he asked you to do something, to talk to Carroll Ingram about a certain subject, and you now know he talked to Carroll Ingram. As far as you know, was that subject ever discussed between them?

A. If it was I have no knowledge of it.

Q. Okay. Did this taping thing you talk about, this conversation take place in that call to you the evening, when he first called you?

A. No, sir, was not, that I recall.

Q. So your recollection now is there was two times you spoke to him?

A. Right.

Q. In your grand jury that's not what you said, you know?

A. Yeah, it was.

Q. Let me show it to you.

A. Okay.

Q. "Question: Did Judge Nixon say anything else during that conversation that you recall?

"Answer: He asked me if I knew whether or not the telephone call that was made from my farm was taped, and if I knew it."

A. May I see it?. Okay. "Question: Is it your recollection the telephone conversation or face to face meeting or do you know for sure?

"Answer: Subsequently I went down there, rack my brain whether it was, with you, but I was down there. The same conversation, just related took place face to face.

Q. The same conversation?

A. Same conversation.

Q. Sir. You and I are agreeing. Don't get excited.

A. You trying to make me out a liar.

Q. I don't mean to make you out a liar.

MR. WEINGARTEN: I ask for an instruction for Mr. Fawer not to make comments. There is no place in this courtroom.

MR. FAWER: May I proceed, Your Honor?

THE COURT: Proceed. But limit your --

MR. FAWER: Editorial comments --

THE COURT: To zero.

MR. FAWER: Done.

BY MR. FAWER:

Q. Mr. Holmes, you said, as I understand it, look a little more carefully, that you had the same conversation, am I correct, face to face?

A. That's correct.

Q. So you're telling us what was said in the telephone conversation was repeated face to face, is that not what you're saying?

A. That's correct.

Q. Today you told us that you didn't have the taping portion of the conversation on the telephone?

A. I don't recall that, no, sir.

Q. You do understand there is a difference between the two, don't you?

A. Between telephone conversation and face to face conversation?

Q. Between what you said then and what you're saying now. You then said you had a call in which two matters were discussed, the judge insistance he had nothing to do with anything with Drew's case?

A. That's correct.

Q. And at the same time saying find out about a taping, right?

A. No, sir. Not in the -- not on the telephone he didn't ask me to find out about the taping.

Q. Your're saying I'm misreading your grand jury?

A. I believe you are.

Q. Okay. In any event, you go and you talk to Carroll Ingram?

A. I do.

Q. That would be right after this conversation with Judge Nixon?

A. That's correct.

Q. Okay. I take it it would be a conversation that Carroll Ingram I take it said I don't know anything about any taping?

A. No. He said he would have to find out, he had never heard about it, Mr. Fairchild doing that.

Q. By the way. This telephone conversation, Carroll Ingram knew about the telephone call?

A. Yes, sir.

Q. That wasn't something, he had heard about it a long time ago, that's right?

A. That's correct.

Q. Had you mentioned it to him before?

A. Either I did, I think he mentioned it to me.

Q. Okay. You know that he learned it from both Wiley had mentioned it to him and the judge had mentioned it to him?

A. Could have, I don't know where he learned it.

Q. Back at the time it all happened as you point out it had, as the judge calls it, zero significance, right?

A. Right.

Q. In any event, you were interviewed by the FBI around that time and you then go to the grand jury?

A. That's correct.

Q. Now, I mentioned something to you earlier, which was I guess sort of in keeping again with your own personality, here's this investigation going on, you are in a sense running around talking to everybody who knows anything about it to find out what's going on, correct?

A. No, sir, not exactly correct. I wasn't talking to everybody. Everybody is a lot of people.

Q. Beg your pardon?

A. Everybody is a lot of people.

Q. You're right, that's an over statement. You were speaking to everybody to whom your mind might know something about the investigation, right?

A. I talked to I believe Karl Kepper, I talked to Carroll.

Q. Anybody in the paper reported as going before the grand jury, you would try to talk to them or someone close to them to find out what it was all about?

A. I don't remember talking to any of the Fairchild's, John Baltar, people I see on TV, no.

Q. Baltar and Fairchild, Baltar is the gentleman works for Mr. Fairchild?

A. I remember seeing them on TV and different people, only people I remember talking to that come to my mind was Carroll and Karl Kepper.

Q. And Jimmy Dukes?

A. Of course that was, talking about the first or second or third?

Q. Throughout the investigation?

A. Well, Jim Dukes, certainly, he was my former law partner.

Q. Did you talk to George Phillips?

A. No.

Q. At no time?

A. No.

Q. In any event, during this period from April until May when you had this interview by the FBI, there was nothing else discussed with Carroll Ingram, do I understand correctly? You don't speak to him again, you have one conversation with him?

A. With Carroll?

Q. Yeah?

A. I have many conversations with Carroll.

Q. About this?

A. About the -- during the investigation?

Q. I just gave you a period of time.

A. Give it to me again.

Q. Between April 18th and May 10th, May 10th I'm correct is the date he was examined, is that right?

MR. WEINGARTEN: I'll have to check.

BY MR. FAWER:

Q. Between the time of April 18th and the date you're spoken to by the FBI, you told us about one conversation, telephone call with Carroll Ingram. Anything more?

A. I would imagine I talked to more than that. I don't remember.

Q. My information comes only from what you've already said under oath.

A. All right. I remember the one conversation when I asked him about the tapes, I remember that.

A. I'm sure I'd go across the street and have coffee with him on numerous occasions.

Q. Mr. Fairchild --

A. The subject matter would come up, naturally.

Q. When Judge Nixon goes to the grand jury, as far as I understand it from reading your grand jury testimony, Judge Nixon voluntarily goes to the grand jury in July, right?

A. Whenever.

Q. Were you subpoenaed to the grand jury?

A. I was.

Q. Okay. He comes to the grand jury, is it fair to say, he doesn't discuss his grand jury testimony with you?

A. Does not.

Q. Carroll goes to the grand jury on July 20th, right?

A. Whenever.

Q. You talked to Carroll about what he said to the grand jury though? You want to know whether he's been questioned about the phone call?

A. No, sir, phone call is not mentioned at that time.

Q. Excuse me. Is it your testimony that when you talked, that after Carroll went to the grand jury, is it your testimony under oath you did not question him as to whether or not he was interrogated about the telephone call?

A. I do not recall that.

Q. Okay. You don't recall having any such conversation between the time you appeared the first time and the second time at the grand jury, correct?

A. I'm sure I talked with him.

Q. About that subject?

A. Mr. Fawer, it could have come up. I do not recall it specifically.

Q. If you talked to him about the phone call as you say it could have come up in that period, it was not at any request of Judge Nixon's?

A. That's correct.

Q. Whatever you were doing at this point was your own voluntarily actions, correct?

A. That's correct.

Q. All right. In September you went back to the grand jury, I want to just give you the chronology so you stay with me. You go to the grand jury, Wiley Fairchild was indicted, do you recall in the same month, September?

A. Indictment was September, I don't remember when he pled.

Q. He pled in November, okay?

A. All right.

Q. And then, you knew there was a certain amount of pressure, suspicions about Carroll Ingram's role in the transaction between the judge and Mr. Fairchild, that was being reported in the press, right?

A. Could have been. I remember Carroll's name -- the crux of Carroll's was handling of the mineral deeds.

Q. That's what I'm referring to.

A. Yes. Which I knew nothing about.

Q. I know you knew nothing about it.

A. Right.

Q. Sometime in January, you had occasion to be talking to Carroll about his visits to Washington to talk to the prosecutors, right?

A. If it was January, it was sometime -- whenever it was.

Q. May have been a little later, maybe February. Maybe February 14th?

A. Whenever it was. Sometime prior to the next grand jury, whenever it was.

Q. You recall going to see Carroll and him telling you that he had told the FBI or the government about the telephone call?

A. That's correct.

Q. And when you heard that, you said you've just got me indicted for perjury?

A. Carroll Ingram told me he had told the people in Washington that, about the phone call and about Judge Nixon's involvement in it, he said, I'm happy to report they told me they weren't going to indict him, talking about Carroll, weren't going to indictment Judge Nixon, weren't going to indict me, what he told me. He said, they said the fact Judge Nixon asked you to do something, since it was not in the federal system, that Judge Nixon had a legal right to ask you to do a favor for another private citizen, who was Wiley Fairchild, and there was nothing to worry about.

Q. That was the conversation?

A. That's correct.

Q. I thought it went a little different from that. Let me look at your grand jury.

A. There was more to it than that.

Q. I mean after him giving you all this terrific news, why did you say to him, well, Carroll, you just made me out for perjury?

A. Carroll told me, he said that, let me see if you can -- there was two different conversations with Carroll. The second conversation as I recall, when I went over there to him, to see him he told me that he had told them that the only thing that I was worried about was the phone call, that I wasn't worried about anything else but the phone call. I said well, Carroll, you just made me out to be a perjurer, because they had asked me the number of times I talked to Mr. Fairchild, and I did not mention, they never asked me about the phone call so I never volunteered it. So that was when I went to see Judge Nixon.

Q. Stop, I want to stay with that conversation.

A. All right.

Q. At that point you knew, at that point you were stating to Carroll that based upon your September and July grand jury, but particularly your September, you were subject to an indictment for perjury?

A. Right. Subject -- I don't know whether I was subject to indictment. I knew, asked me if I had ever talked to Mr. Fairchild another time, and I did not tell them about the phone call.

Q. When you said, well, Carroll, you just made me out for perjury, you were saying you now gave the government a case of perjury on you, right?

A. Well, of course you're putting it in a different context, Mr. Fawer, from the way it will be. I just, right, you made me out a liar, made me out a perjurer, made me out a falsehood, what's in the transcript is what it is.

Q. Made me out for perjury.

A. That's correct.

Q. Perjury means lying under oath, right?

A. That's correct.

Q. You had, you were referring to what you had done before the grand jury?

A. I referred to the fact, when they asked me about the question of -- any other times you talked to Mr. Fairchild and I told them not that I could recall I believe was my answer, and that was it.

Q. In any event, what you then did, you hadn't gone yet to the grand jury in February, right?

A. Right.

Q. I mean here you knew that they had information to indict you for perjury, correct?

A. I knew they had, based upon what Carroll had told me, they had someone who had given them information that would make it inconsistent with what I testified to earlier, that's correct.

Q. When you have a witness such as Carroll testifying to the contrary of what you testified in a grand jury, it is called in the federal system perjury, am I right?

A. That is correct.

Q. There is no two witness rule, one is all you need?

A. Right. I believe, I thought they called it false declarations, isn't that the -- perjury you have to have two, false declaration is one?

Q. One is before a grand jury, the other is not. The thing with the five year charge that was hanging over your head, remember the five charges?

A. Right.

Q. Four of them, you keep referring to them as perjury, they are really the false declarations.

A. They indicted me, too.

Q. And they were five years apiece?

A. Yeah.

Q. What you did then, that was a weekend, that was like on a Thursday or a Friday in mid-February, right?

A. Whatever.

Q. You were upset?

A. I wasn't happy.

Q. What did you, you got on the phone, you knew Judge Nixon was in town, call him, right in this courthouse, right?

A. That's correct.

Q. He had a jury that was out, he was in the midst of this trial, evening and the jury was deliberating, correct?

A. That's correct.

Q. You wanted to see him, asked him to come down to his car because you wanted to tell him something, correct?

Q. Told him we needed to talk.

Q. That's what I'm saying. He came down?

A. That's correct.

Q. And at that time, this had to be on like February 15th, right?

A. Correct.

Q. Before you went to the grand jury?

A. That's correct.

Q. Correct?

A. That's right.

Q. And you again, you told him what Carroll had told you, right?

A. I repeated our conversation.

Q. And he said to you at that time, he also told you you had made the phone call, in fact he used the phrase telephonitis?

A. No sirree. That isn't what I said.

Q. At Page 41 of your grand jury testimony of February 25th, six days later, you described the conversation in the car. Did you not say at that time that he, when you said this to him, he said, Bud, I don't know why you called Wiley, you have telephonitis, like you always do?

A. Do you have my --

Q. Excuse me. Let me show you, look at two pages. You can look at Page 41 and again at 53 and 54?

A. Get me my last grand jury testimony.

Q. We don't come to that yet. We're talking about six days later?

A. That's when I was still trying to cover up, that's exactly right.

Q. Didn't he tell you -- when he met you at that time, didn't he use the phrase that you had telephonitis in making that call?

A. Did not.

Q. He didn't?

A. Did not.

Q. That was Peterson, he didn't say that until Peterson?

A. Did not.

Q. Is that right?

A. No, sir.

Q. Did he say it at Peterson's?

A. No, sir.

Q. How come you testified to that, that way when you went to the grand jury in June?

A. I was trying to recount, soft peddle the thing after Carroll had told it to them, based upon that conversation, when I got indicted.

Q. Sir. You know what you're not doing now? Listening to my questions. I just referred to your June testimony.

A. What year was that testimony in?

Q. Well, I mean you don't even recall that?

A. Well, there's been so many of them, the way you're going, it's hard to keep up with you.

Q. Been so many of them, June of 85, if that makes -- if that helps you.

A. June of 85?

Q. Sure, right after your plea agreement. Could you have ever testified about the Sam Peterson, the meeting, the time when you ran into the judge at Sam Peterson's farewell party?

A. I testified about that.

Q. You couldn't have testified about that any time except June, right?

A. Right.

Q. You testified there, when you talked to the judge he mentioned about, again about the telephonitis?

A. Do you have my testimony there?

Q. Surely do.

A. Okay.

Q. I was to stay first with the February one so we can deal with it first.

A. I'd like to see the June one since you're cross examining me on it, see what the telephonitis is in the June one.

Q. Sir, remember you testified six days later. Remember I said that to you. Six days after you're sitting in the car with the judge, you go to the grand jury, don't you?

A. Mr. Fawer, let me say this. You are running so many different times and places in here you're confusing me. I would like very much to have an opportunity to give you straight answers on the things.

Q. Let's do it chronologically, right. You took me from February to June, may have done it inadvertently. You're in a car sitting in a parking right outside here, right?

A. Right.

Q. And the judge is talking to you, right?

A. Right.

Q. And you're telling him what Carroll said?

A. That's correct.

Q. Isn't it a fact he told you, go tell the government what happened, you made a phone call, you had telephonitis, I don't know why you made that phone call, but you made it. He didn't deny there was a phone call, did he?

A. No, sir, but he didn't say that out in the car.

Q. Hold on a second. Is it okay for you if I show you the February transcript?

A. Sure.

Q. Okay. Let's read it together, Page 41.

A. All right.

Q. February 21st, right, six days later?

A. All right.

Q. There is, have you discussed this with Judge Nixon, okay?

A. Yeah.

Q. What was his -- what's his recollection of the call. He said that I called him, he said that I got, what's the next word?

A. Said I called him and got telephonitis, where does it say I was in his car?

Q. Sir, your problem is -- I'm taking you to it in three stages?

A. You said just now I said I was in the car, he told me downstairs in the car, that's what you said.

Q. Exactly.

A. That's not what it says in there.

Q. Sir, I can read this transcript as you'll see.

A. All right.

Q. What the question is, I can only ask you one question at the time. Here they asked you, what did he say. They asked you, when did he say it, and you describe the conversation as having taken place just the week before. Why don't you just look at this. Is there any other time you could have had this conversation about the telephonitis?

A. Telephonitis came from his attorney, Bill Goodman, who related that he doesn't know why I may have made the phone call, might have just got telephonitis, that's what I told the grand jury. Subsequent to that I got indicted for it.

Q. Okay. Let me just get the page reference.

A. I got indicted because I was trying to cover it up.

Q. You still got a question in front of you or do you want to add something?

A. I didn't know you ever quit.

Q. Excuse me?

A. Excuse me?

Q. I didn't hear you?

A. I said I didn't know you ever quit.

Q. Quit what?

A. Quit questioning.

Q. Can you tell me the question?

A. I'll be glad to cross-examine you if you want to change places.

Q. I've never had to make --

MR. WEINGARTEN: I object to this colloquy, Your Honor, irrelevant.

BY MR. FAWER:

Q. Look at Pages 41 and then 53 and 54, and see if you're not relating to the grand jury the conversation you had with the judge outside the courthouse in the car, 41, go back and forth to the page. I'm trying to direct your attention to it. 41 and 53 and 54. Is it fair to say you are describing to the grand jury a conversation that you had with Judge Nixon in which Judge Nixon is telling you what he understood took place the night of the phone call?

A. Okay.

Q. Is that what -- Is that a fair summary of what the subject is there?

A. Right.

Q. Okay. Now read it and before you, you know, you talk, read 53 and 54, also. Go back and forth, do anything you want.

A. All right beginning on the top of page --

Q. Just read it, first, please. All I'm asking you to do is read it, then I'll pose a question.

A. I thought for the record I might.

Q. This is thought off the record though, we are on the record?

A. Okay. When was the conversation --

Q. I just said read it to yourself?

A. I am.

Q. To yourself?

A. Can't I read it to the jury?

Q. All right, I'll ask you, the way we work this, I ask questions, you answer them and then he can redirect you after. If he wants you to read the whole thing. We can?

A. Okay.

Q. He will have to ask you to do that. Okay?

A. Okay.

Q. I know you're upset but stay with us a little longer?

A. I'm not upset.

Q. If you're not, just answer the questions because time's passing.

A. I'm ready to move on whenever you are.

Q. You still haven't done what I asked. 53 and 45 is when they come back to it?

A. 53?

Q. 53 and 54. Have you read it?

A. All right.

Q. Excuse me.

A. Go ahead.

Q. Stay at 53 and 54 so you can follow it.

A. 53 and 45?

Q. Yes.

A. Okay.

Q. There you're describing it and asked the extent of what your conversation was between you and Nixon concerning it. You say to the Judge did he make the call to Wiley? What did he remember? You told him, quote, hell, I was drunk and he, Judge Nixon said that I called, that you called him up but that he talked to him. It didn't have anything to do with the case. Is that your testimony there?

A. Right.

Q. Okay. And that's what you told them six days after Carroll Ingram had left. You know that the government knew of the telephone call. Right?

A. That's correct.

Q. And it was just four or five days or maybe it's still six days after you have had this conversation at your request, with Judge Nixon outside this courthouse. Right?

A. That's right.

Q. Okay. And at page 41 --

A. 41, okay.

Q. -- concerning this conversation, you quote Nixon as saying, Judge Nixon, that you had called him, him being Wiley. That you, as he put it, had telephonitis?

A. Right.

Q. You said quote, I just don't remember calling, close quote. Am I right?

A. That's correct.

Q. And that finally, that there was nothing discussed about the case with Wiley that night, which course is true under any interpretation. Right?

A. Correct.

Q. Okay. Now as I understand it, just before, you left out one small thing. You saw Carroll. Where did you see Carroll when he told you about the first time what he had told the government? At his office, on the phone, your office, his office?

A. At his office.

Q. Over on Pine Street?

A. Right.

Q. Then you spoke to the Judge, right, Friday night?

A. Yeah, that's right, after I saw him. I came over to see him. Right.

Q. You went back over to see Carroll on Monday morning. Right?

A. I don't remember whether it was during the day or the night.

Q. Do you remember trying to tell Carroll that perhaps he had a failure of recollection as to what the events were?

A. That's right.

Q. That's called, for those of us who work in the criminal law, attempting to subborn perjury, isn't it?

A. Well, of course, to be frank, I don't know exactly what you're referring to.

Q. Well, you tried to tell him what to say -- He had not yet gone back to the Grand Jury. Right?

A. That's correct.

Q. But he was about to go?

A. To be frank, I didn't know if he was going back or not.

Q. Well, he did go back the same day you went back, didn't he?

A. I don't know.

Q. And you on that day were trying to suggest to him that maybe he ought to alter his recollection?

A. Did not.

Q. You didn't try to subborn perjury?

A. No, sir, did not.

Q. I take it the only other person who would have any information on this would be Carroll Ingram?

A. That would be correct.

Q. So we could leave it to him to tell us what had occurred. Right?

A. I told Carroll what I remembered about it. Carroll's words were, well, you remember it the way you want to and I got to remember it the way I want to.

Q. You were telling him his verse or your version was not your recollection. Right?

A. I told him the way I remembered it.

Q. You were suggesting to him, were you not, that perhaps your recollection was better than his and perhaps that's how he should testify?

A. Did not.

Q. That's not what you had in mind?

A. Did not.

Q. I see. But in any event he told you he would have none of it, he had a specific recollection of what he remembered which differed from yours. Right?

A. Carroll told me, my memory is one thing and yours is something. Words to that effect.

Q. What is the story that you tried to tell him? Hearing it from Carl Kepper? Or what was the story you had tried to pawn off on him?

A. I don't recall that.

Q. You just said you had two versions. What was your version?

A. Version of what?

Q. The telephone call. Carroll's told you before to tell before the Grand Jury this is what I know of it?

A. Right.

Q. You go back, trying to tell him your version and he says mine and yours aren't the same. Tell the jury what was different in yours from his.

A. I don't recall.

Q. But it was different?

A. I'm sure was.

Q. And it had nothing to do with testifying in a certain way before the Grand Jury?

A. Did not.

Q. In any event, whatever you told him, you didn't do it at any request from Judge Nixon. Right?

A. Was not.

Q. By the way, you then mentioned one other event, I believe it was the party, you had been indicted already, had you already entered your plea or not not yet when you decided you would go to this farewell party for Sam Peterson?

A. I had not pled. I was getting ready for my defense.

Q. In other words, you were between indictment and trial?

A. Trial, that's right.

Q. Trial that ended up in a plea, but you were preparing for what was the trial?

A. Right.

Q. You had been drinking before you got to the party?

A. Right.

Q. You were drinking at the party?

A. Yeah.

Q. The Judge was there?

A. Right.

Q. Sam was a friend of his?

A. Right.

Q. And Barbara was there?

A. Right.

Q. You hadn't seen them in some time?

A. Right.

Q. You chose, the Judge didn't come up to you, you went over, you approached him to talk to him. Right?

A. That's correct.

Q. He had never sought to -- Had he ever sought you out in an effort to get you to testify in any way? He never told you to go to Wiley Fairchild, Carroll Ingram, Drew Fairchild, anybody under the sun, to get them to testify in a certain way, did he?

A. No, sir.

Q. Did he ask you?

A. No, sir. He asked, ought me to go find out about the tapes.

Q. That's what you said?

A. He asked me what he did, that's what I told you.

Q. My question again.

A. Okay.

Q. Just focus on what comes out of here. Did he ever ask you to go to anyone to ask them to testify a certain way before the Grand Jury?

A. Did not.

Q. Did he ever ask you to find out what someone testified about before the Grand Jury?

A. Did not.

Q. Did he ever ask you to find out or to tailor your testimony in any way when you went back to the Grand Jury these four times?

A. (No response.)

Q. Did he ever make such a request of you?

A. No, sir. He never did come out that way. I interpreted that that was the way he wanted it to go.

Q. That came off, when you met -- Excuse me, he called you, as you told us, in a rage -- I said rage, very angry, highly incensed on April 18 and said I had nothing to do with it, I don't understand what they're talking about,\ I had nothing to do with any wrongdoing concerning the Drew Fairchild case. You took that to mean you should go lie to a Grand Jury. Is that your interpretation?

A. Well, it wasn't the Grand Jury empaneled.

Q. That means you took that to mean go lie to the FBI, go lie to the Department of Justice, go lie every single time you're called to the Grand Jury?

A. Mr. Fawer, when the man asked me to go find out about the tapes and when he told me, repeated the statement I've never talked to anyone about this case at all, I've told them I haven't talked to anyone about the case, and when it came out in the paper what his statement was about I've never talked to anyone about the case, you know, that's what his press conference was, I had to go in and make him out a perjurer or I had to go along with what I had read he said, and I made the mistake of going along with his version.

Q. I see. You did this all because of friendship?

A. Yeah.

Q. A little bit like Jonathan and David in the Bible?

A. I haven't read Jonathan and David.

Q. You ought to read it. It's a good story. But that had nothing to do with you're talking to Carroll Ingram about his potential Grand Jury testimony, correct, in February?

A. Well, I know good and well that Carroll talked with him, that he would be telling him about the conversation and everything that he had with the Judge.

Q. Oh, you were protecting the Judge?

A. Yes, sir.

Q. It wasn't you, it wasn't you who was being made out as a perjurer, it was the Judge you were worried about?

A. To be frank, I was interested in myself, too.

Q. Oh. Just this much interested in your own welfare?

A. Well, I never have put the inch marker to it.

Q. Well, it's not, it's really your interest, your interest is really down there, it's the welfare of your constituents that's really high in your mind. Right?

MR. FAWER: I'm going to object to relevancy.

MR. FAWER: I'll withdraw.

BY MR. FAWER:

Q. I mean that's the reason you said the other items that he read off when we started your interrogation, the other charges of perjury, the ones you conceded had to do with you and you alone and nothing to do with the Judge? Those are just errors you made before the Grand Jury, failures of recollection?

A. No, sir.

Q. Relating to yourself. Right?

A. No, sir. I was to, the failure of recollection was I was trying to cover up about the phone call.

Q. But when you went to see -- But you got indicted for four other items. Right?

A. Right.

Q. You pled guilty to tailoring your testimony?

A. That's not what I pled --

Q. Excuse me?

A. Contempt of court.

Q. Tailoring your testimony?

A. I think it's in there. You read it three times.

Q. It doesn't seem you remember it. Let's go on. We are almost done. The Peterson meeting, you told him you wanted to talk about the call?

A. Right.

Q. Right?

A. That's correct. Right.

Q. As I understand it, he's not taking any position that he -- He didn't deny the existence of the call, he's talking to you about telephonitis, right?

A. No, sir. First time I talked to him down in the car. I don't know what you're talking about in the telephone call --

Q. We are at the Peterson meeting. Did you hear me say Peterson?

A. He was always taking the position there wasn't a phone call. I said he's always denying the telephone call.

Q. So we can end this on some rational note, at the Peterson party, at the Broadmore, right?

A. No, sir, it was the Sun-Kist, I believe.

Q. Excuse me?

A. Sun-Kist, I believe.

Q. Spring, 85, right?

A. Whatever date.

Q. A few drinks in you, you go seek out the Judge. Right?

A. Right.

Q. You haven't spoken to him since you saw him in the parking lot. Right?

A. I believe that's correct.

Q. You have a conversation you initiate, I want to talk about the telephone call?

A. We need to get together to discuss the telephone call.

Q. You need to get together. Right?

A. Well, I was getting ready to go on trial. I knew it was one of the things I was indicted on, I knew he was going to have to be a witness.

Q. You went and approached him and said we have to get together?

A. Right.

Q. Did he deny at that time the phone call?

A. He said, no, sir, I don't know why you made the phone call to Wiley.

Q. You're talking about -- He does not deny the existence of the call. Correct?

A. No, sir.

Q. He tells you about the telephonitis again, what he told you before?

A. I don't recall that, no, sir.

Q. Let's look at your Grand Jury.

A. Okay.

Q. Now so we'll -- Here. It was at the Broadwater?

A. Okay. Sam's in the courtroom. Go over and ask him where it was. I don't remember.

Q. It's your testimony.

A. All right.

Q. We are having a retirement party at the Broadwater at the Gulf Coast. I went down there to Sam's retirement party?

A. Right.

Q. I saw him and went over to talk to Judge Nixon, had a couple of drinks and told him -- I had been to another place and I went over to talk.

A. Yeah.

Q. I need to get together and talk with you about this dog-gone telephone call. Right?

A. That's correct.

Q. I felt like I had ridden that horse about as far as I needed to ride it?

A. That's correct.

Q. By the way, this is before you entered the plea?

A. That's April, I believe.

Q. I'm talking about the meeting taking place?

A. That's right.

Q. Your testimony is taking place after, the meeting is before?

A. Right.

Q. At the Broadwater?

A. Right.

Q. He looked up and said, well, I don't know why you called Wiley. You picked up the phone and called him and started assuring him the agreement you had with him was going to be honored. You just picked up the phone and called him. Is that correct?

A. That's correct. Where is the telephonitis in there?

Q. I was just looking for that. I was looking for my notes.

A. I wish we would --

Q. I thought we just read about the telephonitis?

A. No, you said it was in there. It's not.

MR. WEINGARTEN: Objection. This is mere argument.

MR. FAWER: I did not argue with him. It does not say telphonitis. I just thought --

THE WITNESS: He kept telling me it was in there and I asked him to show it to me. It wasn't in there.

MR. WEINGARTEN: I request that you instruct counsel to pose questions and simply do it.

MR. FAWER: I don't know the objection, Judge. He was -- I was reading something to him. MR. WEINGARTEN: This is obviously improper, Your Honor.

THE COURT: Let's move on.

MR. FAWER: Thank you, Your Honor.

BY MR. FAWER:

Q. So I understand once and for all, when is it the telephonitis conversation did take place?

A. Judge Nixon never told me telephonitis. Bill Goodman relayed to Jim Dukes that the Judge did recall a telephone conversation out at the farm and he did not know why I made the phone call, you know, Bud just got telephonitis.

Q. I see.

A. I assume that was going to be Judge Nixon's position. That's what I told the Grand Jury.

Q. I see. That was a conversation when?

A. In the Grand Jury I got indicted on.

Q. You mean in February?

A. Yes, sir.

Q. Do I understand correctly in February, though, you did say that to the Grand Jury?

A. That's right.

Q. That's what he had told you, that he had, he told you that you had telephonitis?

A. That's what you read. It's in the Grand Jury. That's what I testified to.

Q. So I can understand, it's not like I didn't see it there, you quoted Judge Nixon as having said it.

A. That's not true. That's what Bill Goodman, his attorney, told Jim Dukes and that was what I told the Grand Jury.

Q. Wait a minute, but that's not what you, you told that to the grand jury?

A. That's what I told the grand jury.

Q. Did you tell the grand jury anything about Bill Goodman and Jimmy Dukes?

A. Did not.

Q. What you told the grand jury is?

A. Judge Nixon told me that.

Q. One other area to ask you. When you saw that you were sort of potentially going down the tubes to coin a phrase, first of all, when did you suddenly -- when did you come to realize that your involvement in the Drew Fairchild case created a potential problem for you in terms of this entire investigation?

A. Would you mind rephrasing that? That's such a broad spectrum.

Q. There came a time that you feared if you were the person who was involved, who could be viewed as having handled the Drew Fairchild case in your office, as district attorney, that that presented some problem for you?

A. I'd say back before the first grand jury ever met.

Q. Okay. And that fear continued beyond that, did it not?

A. Well, when the government questioned me about the thing, I knew then that they wanted to have an answer, so I went and got the file out. Initially, Mr. Fawer, they were trying to make noise like I was getting money, taking money, I knew there was just no basis.

Q. Who is Katie Matison?

A. She is my assistant, was my assistant.

Q. You're not on very good terms with her any more, are you?

A. I haven't talked to her in a long time, no.

Q. Her father was one of your dearest friends?

A. I'd say that's true.

MR. WEINGARTEN: Maybe, may we have a proffer at the bench?

MR. FAWER: Sure.

(AT THE BENCH:)

MR. FAWER: He tried to suborn Katie's perjury. Katie so told me. She is on my witness list. I'm going to accuse him of it.

MR. WEINGARTEN: Okay.

(Open court:)

BY MR. FAWER:

Q. Katie Matison, that's her married name?

A. Right.

Q. Matison is?

A. Correct.

Q. Her father is Prentiss Smith?

A. That's right.

Q. Had been one of your closest friends?

A. Yes.

Q. You're not really on very good speaking terms any more?

A. Not real close.

Q. That's because you tried to suborn Katie Matison's perjury.

A. That's a lie.

Q. Is it?

A. It is.

Q. Did you not try to get her to tell the grand jury to tell the government, that she and not you made all the decisions in the Drew Fairchild case?

A. That is a lie. I never told her to do that.

Q. I take it though the way we could find out the truth is by asking?

A. You ask Katie.

MR. FAWER: Fine. I think I have no other questions. Bear with me one minute.

I have no other questions. Thank you, Mr. Holmes.

REDIRECT EXAMINATION

BY MR. WEINGARTEN:

Q. Mr. Holmes, let me begin with Defendant's Exhibit 30 Mr. Fawer showed you. It's the docket sheet, or the case sheet of an event, or case that took place in Biloxi before Judge Nixon. Are you familiar with this civil action, sir?

A. No, sir, am not.

Q. Do you remember looking briefly through this document with -- when Mr. Fawer showed it to you?

A. I did.

Q. Do you recall the point being Judge Nixon was in court on May 14th, in Biloxi, therefore couldn't be in Hattiesburg, do you recall that?

A. I remember that statement was made by Mr. Fawer, yes.

Q. Could you look through there and see if there is any indication of when Judge Nixon was -- any time? I direct you specifically to the third page of Defense Exhibit 30?

MR. FAWER: So we don't waste time, we have --

MR. WEINGARTEN: I can waste all the time I want, Mr. Fawer.

MR. FAWER: We specifically talked about the morning, so it's not, looks like I'm misleading, we talked about --

MR. WEINGARTEN: We'll let the jury decide that, Mr. Fawer.

MR. FAWER: If he's looking at it.

THE COURT: Be quiet.

MR. FAWER: Your Honor, I have no --

THE COURT: Be quiet.

MR. FAWER: I want to offer it in evidence. It hasn't been offered. I would like it offered in evidence. It has not been offered.

THE COURT: All right. It can be received, I don't care.

(Exhibit No. D-30 marked)

BY MR. WEINGARTEN:

Q. Is there any indication when Judge Nixon was in court?

A. Yes, sir, nine o'clock to ten-thirty o'clock that morning.

Q. How long a ride is it from Biloxi to Hattiesburg?

A. Hour and a half, two hours.

Q. Have you made that turn around in one day in your life?

A. Do it all the time.

Q. Pardon?

A. All the time.

Q. Thank you, sir. Let me just understand about telephonitis. When is the first time you heard that word, Mr. Holmes?

A. When Jim Dukes told me that Judge Nixon's position, according to his attorney, Bill Goodman, was that he didn't know why I made the phone call, I just developed telephonitis.

Q. Did Judge Nixon use the word telephonitis in the car outside this courthouse that night when you met with him?

A. Did not.

Q. What was his position then about the phone call?

A. He didn't know what I was talking about, what phone call.

Q. How soon after did you hear the word telephonitis?

A. Oh, couple of days after that Jim Dukes met with Bill Goodman and Bill called back, at that time what we were trying to do, I was trying to urge us going in before the grand jury, recount, just tell them all about the telephone call because I didn't feel like it was anything to hide on the telephone call.

Q. When you went back to the grand jury, that what you did, Mr. Holmes?

A. Yes, I did.

Q. When you went in immediately after hearing the word telephonitis, what did you do when you next went in the grand jury?

A. When I went in the grand jury, I tried to do my best to soft peddle it, mention the telephone call, hoping I could slide through on the thing by trying to soft peddle it.

Q. Did you slide through?

A. Question was asked to me that, did I have a chance to talk to Judge Nixon, Judge Nixon said I had telephonitis.

Q. Is that true?

A. He didn't tell me that, no.

Q. Did you slide through?

A. I got indicted.

Q. That precisely the reason you got indicted?

A. Exactly, I got indicted over the telephone call, which you all told me if I would come into the grand jury at the very beginning, told you all about the telephone call, I never would have been indicted.

Q. Is that what you pled guilty to?

A. I did. That's the only thing. Well, I believe taylor ing, the only thing I felt guilty at all was covering up the telephone call.

Q. Had Judge Nixon ever told you to do something with the Drew Fairchild -- you said he never verbally did.

A. The mere fact of telling me Wiley was interested in it, he was doing these investments with him, I just got the impression that it would be very much to his benefit to help him look like a hero, whatever you want to call it, with Wiley, so I took it on myself to do it. It was through that influence is the reason I did it.

Q. How long have you known Judge Nixon?

A. Pardon?

Q. How long have you known Judge Nixon?

A. Since approximately 1959 or 60.

Q. Have you had a lot of conversations with the man?

A. Yes.

Q. Do you feel like you know him pretty well?

A. Right.

Q. Do you feel like you know how to interpret his behavior?

A. I think I do.

Q. What does it mean, or in your experience as a district attorney, what happens to cases that are passed to files?

A. Normally they stay in the file. Nothing ever comes of them after that.

Q. Would passing the file toll the speedy trial rule in Mississippi, the speedy sentence rule?

A. Yes, it would.

Q. Did Judge Nixon instruct you to find out if the call was taped or find out if the call was taped from Carroll?

A. My understanding, as I recall it, he asked me to check with Carroll to find out, or, he first asked me if I knew if it was taped. I remember saying how would I know, he said see if you can find out from Carroll. That's the reason I went to Carroll and asked him.

Q. When you had the conversation with McMullan, did you expect McMullan was taping you by the way?

A. Did not.

Q. Do you have a calendar before you? Did you say to yourself, well, this date and this date, must be a year before?

A. Whenever I said a year earlier that was just a figure of speech. I was, I've said, say, this is the most Mickey Mouse thing in the world, that phone call didn't amount to a hill of beans. We let it grow into a hill of beans. I still feel like that the crime we committed was trying to hide something that didn't need hiding, you know, just something, come in, yeah, Mr. Fairchild asked me to say something to me, he said it to me, you know, I did it, that would have been the end of it. There was no crime there.

Q. Mr. Holmes --

A. Nobody got paid any money to do it.

Q. Did the telephone call from your farm to Wiley Fairchild take place before or after the case was passed to the file?

A. It took place several months before, because I know, I knew that my, when I had to come to realization only way I could pass the thing, do anything with it, I would have to reopen the case, because it, he had already pled guilty. I kept hoping Watkins would come on in, I could go ahead and sentence Drew, that would be the end of it, that would satisfy everything, but he didn't. And so I just went ahead finally in December and did what I did.

Q. Are you saying that that call took place before the case was passed to files?

A. I have no doubt it took place before I passed it to the files.

Q. Are you saying that to please the government?

A. No, sir, I don't care what happens in the case, you know. I sure ain't got no love for you, let's be honest.

MR. WEINGARTEN: Thank you, Mr. Holmes.

RECROSS-EXAMINATION

BY MR. FAWER:

Q. Very briefly, Mr. Holmes. As I understand, first of all with respect to all of your testimony, everything you talked about from the minute you got on the stand I guess yesterday at about three-thirty yesterday afternoon, right?

A. Whenever.

Q. The last twenty-four hours, at no time, despite the government's plea agreement with you, and your agreement with it, and their right to give you a lie detector test, at no time have they ever given you a polygraph test?

A. I've answered that once. That's true.

Q. Just once -- don't count, just answer, okay?

A. Is this redirect or re re or what?

Q. It's what the judge allows us to do, okay. They have never, you have never been asked to take a polygraph?

A. That's exactly what I've already answered that question.

Q. Let me understand something. Normally if a case is passed to the files, stayed there, why did you bring it back a month later?

A. Because of so much publicity about it, and Watkins came up here, I made the public statement and had the agreement with Bill Porter that if we could get Watkins back up here it would be reopened.

Q. Telling me when you have passed to it the files, we could show you your own DA's files, Katie -- you are extradition was under way.

A. Certainly. That's what I explained to you this morning, Mr. Fawer, if I may. We have a similar identical case out of Tennessee and the federal government would not extradite the people. Almost on all fours with Watkins down in Florida. They were fighting it, we don't know if he would be up here or not?

MR. FAWER: Bear with me.

(Pause.)

BY MR. FAWER:

Q. Before you even passed it to the file, the extradition papers had already gone or --

A. That's correct.

Q. There was nothing at that point to believe the extradition wouldn't be honored?

A. Except there is, there was no reason to think it wouldn't be honored in Tennessee.

Q. I understand that.

A. But they weren't.

Q. Is it fair to say when you moved it to the files, you had no reason to doubt you would be pulling it back as soon as he came back?

A. If we got him back, that was --

Q. You had no reason to believe you wouldn't get him back?

A. Yeah, it was, too. Tell me about the people in Tennessee we hasn't gotten them, that's been four years ago.

Q. How many times have you had extradition requests?

A. Oh, I'd say probably thirty, forty.

Q. Thirty to forty. You keep harping on this one matter where there was a screw up?

MR. WEINGARTEN: Your Honor, outside the scope of redirect.

MR. FAWER: It's not. It's on the subject. They asked him about bringing the case back from the files. I have two questions.

BY MR. FAWER:

Q. You said thirty to forty. Virtually every one there is an honoring of the request, you keep telling us about this in Florida.

A. A lot of times you don't get this honored.

Q. Fair to say, so we don't dwell on it too long, most time, extradition requests done properly are honored, right?

A. I'd say that is a general statement.

Q. Thank you very much. One other thing, so I understand it. If I understand your testimony, you're telling me that in February when you meet the judge he is denying the very existence of the phone call?

A. That's correct.

Q. Yet eight months before, ten months before, he is admitting it to you. Correct?

A. That's correct.

Q. In other words, when you talk to him, according to you, in April he's not denying it, the investigation is already underway, correct?

A. Correct.

Q. It's your position, you want the jury to believe that he admits it to you, correct?

A. That's correct.

Q. And that then later on he denies it, to the same person?

A. Mr. Fawer --

Q. Is that, am I correct?

A. You're correct. May I explain it?

Q. Explain what he did?

A. May I explain, yes, sir.

Q. Go ahead.

A. After people were getting indicted and all of us thought, started thinking we were going to get indicted, then it seemed like that people begin to get different positions in the thing. Became obvious that when he started not remembering the phone call and he did not want to come on in and just tell it like it was.

Q. When you say he didn't want to come on in, you know, you made -- what goes on in your mind and what you said and heard are two different things. You have agreed to -- you told us about a meeting in April with the judge.

A. May I finish my answer?

Q. You told us about a meeting with the judge in April.

A. Yes, sir.

Q. Don't meet him in terms of the grand jury you go to in July, right? You told us that before, you don't talk to him about your grand jury or his grand jury, right?

A. Which April are you talking about?

Q. April 84, sir. That's when he called you, that's when this taping conversation you say took place, okay?

A. That wasn't --

Q. Hold on to some of the dates at least.

A. There wasn't a grand jury then.

Q. Then comes the grand jury in July, you get subpoenaed, he goes voluntarily, and you don't talk to him about it, right?

A. That is correct.

Q. You go to the grand jury in September, commit a little perjury, you don't talk to him.

MR. WEINGARTEN: I object, this is --

MR. FAWER: I have five more questions. Seems to be, based upon his redirect, to ask them, finish and sit down, that's all I wish to do, Judge.

THE COURT: Well, get through.

MR. FAWER: Thank you.

BY MR. FAWER:

Q. You come out of that grand jury, and you got another one coming up in February, right?

A. Right.

Q. Carroll has told you what the problem, that he has said something to them, according to you is going to get you indicted for perjury, right?

A. That's correct.

Q. You've had no meetings with the judge about this, right, until you call him, you go in the car while he has a jury up here, right?

A. Right.

Q. Now you're saying, all this is going on, sitting around figuring, you didn't even meet with the man and talk to him once, right, until you sat with him in the car, at your request. There was no calculating what was going on. Maybe there was in your mind, but you're the one doing the calculating. You're not doing it with him, are you?

A. Are you telling me or asking a question?

Q. I'm asking.

A. You make a statement, then you're saying, right right. I'd like to know which one of the questions I'm sitting here listening to you're interesting to listening to the answer to.

Q. Tell the jury, did you talk to him from the time you spoke in April? Did you discuss the investigation with him after you went to the July grand jury, yes or no?

A. I'm sure I did, sure.

MR. FAWER: I want you to understand. He's now saying something that's contrary --

MR. WEINGARTEN: Excuse me, you don't have to direct something to the judge.

MR. FAWER: May I address the bench, or do I have to get his permission?

MR. WEINGARTEN: He's making a speech to you, Your Honor.

MR. FAWER: I'm not. I'm --

THE COURT: Go on with your question.

MR. FAWER: Thank you.

BY MR. FAWER:

Q. You told us before you had no conversations after your grand jury, first appearance, right?

A. If I said that I would have to think that would be in error because I have talked to him.

Q. About the investigation?

A. When we get together we talk about it, sure.

Q. Did he tell you how to testify or anything like that?

A. No, sir.

Q. Didn't say I'm denying the phone call because from what I understand, the first time you say he says that is in the car in February of 85. Right?

A. Right.

Q. Then you tell us, when you go to the Grand Jury in June of 85 -- yeah, June of 85?

A. Right.

Q. That the reason you lied is because that was the party line that he wanted you to follow. Right?

A. That's my opinion, yes.

Q. But at no time does he talk to you about that, ask you to do that, except you say when he meets in the car and he is suddenly denying the call that he's admitted to you the last time you ever discussed it. Right?

A. No, we discussed it down at Sam Peterson's.

Q. That's four months later.

A. I didn't calculate it. If you say so.

Q. Why are you telling me something that's later?

A. I thought you said I never talked to him again.

Q. We are talking about before February of 85, okay, before you go and perjure yourself for what is it, the third time?

MR. WEINGARTEN: Your Honor, I object to that.

THE COURT: Sustain that.

MR. FAWER: Fine.

BY MR. FAWER:

Q. Peterson's party comes later and he's not denying it to you there, is he?

A. He's denying the truth of the phone call.

Q. You're telling us though in February he's saying, I don't know what you're talking about, no phone call. Correct?

A. That's correct.

Q. Sam Peterson, you have a drink in your hand, he has a drink you pull him aside you speak to him, he's not denying any phone call, he's saying you made the phone call, I didn't?

A. Told me you made the phone call. I don't know why you picked up the phone, you called Wiley Fairchild and assured him you were going to honor the plea bargaining and Bill Porter and I said, yeah, it made sense.

Q. You said I was drunk, right? You said I was too drunk to remember?

A. That's what I said when I perjured myself that's what you're talking about.

Q. That's what you said at the Peterson party right?

A. That's not what I said what I told the Grand Jury the last time.

Q. We are having trouble seeing which is the truth?

A. Go back and see. Before indicting or after indicting.

Q. The Peterson party is going on, right? When is this, about May of 1985, April, May of 1985?

A. Whenever.

Q. Just before you decide to plea. Right?

A. Right.

Q. And take this lesser charge. Right?

A. Well, it's obvious.

Q. Just so I understand, this conversation takes place just before you agree and the lawyers work out a reduction of your exposure from 25 years in prison to one. Correct?

A. I don't think it would go quite that long but --

Q. Five times?

A. Whatever the amount.

Q. Five times five counts. Right?

A. That's right.

Q. So reduction of your exposure from 25 years to one. Correct?

A. That's right.

Q. You're knowing at all times that the person the government wanted, you make a deal with the government, and give them something on the judge as you knew before, you could walk away earlier, right, they told you that?

A. I gave them and confirmed with them what they had already confronted with me about this situation.

Q. Before you were indicted you knew you could avoid indictment?

A. That's correct.

Q. If you could make a case against the Judge?

A. That's right.

Q. Once you were indicted you would reduce your exposure from 25 years to one if you gave them a case on the judge. Correct?

A. Before they indicted me, I told you this before, they already had the same basic information.

MR. FAWER: No other questions, Judge. Thank you.

THE COURT: Thank you, sir, you're excused.

THE WITNESS: Thank you, Judge.

THE COURT: Members of the jury, we'll recess until nine o'clock on Monday morning and I'll see you then.

(Recess.)

(End of Volume 8.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: February 3, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 9

DAVID A. SCOTT
COLLEEN O'CONNOR
SCOTT & O'CONNOR
COURT REPORTERS
Post Office Box 2202
Jackson, Mississippi 39225-2202

THE COURT: The Government may proceed.

MR. WEINGARTEN: Thank you, Your Honor, Carroll Ingram.

MR. WEINGARTEN:

Q. Your name, sir?

A. Carroll Ingram.

Q. Spell your first and last names.

A. C-A-R-R-O-L-L, I-N-G-R-A-M.

Q. Where do you live, sir?

A. 202 Greenwood Place, Hattiesburg, Mississippi.

Q. And how old are you?

A. 43.

Q. How are you employed?

A. I'm a lawyer.

Q. How long have you been a lawyer?

A. For 18 years.

Q. Where did you go to law school?

A. University of Mississippi.

Q. And in brief and summary fashion, tell the ladies and gentlemen of the jury what you've done as a lawyer since graduation.

A. Well, when I graduated from the Ole Miss Law School and I came to Hattiesburg to practice law. I joined a local law firm four years and then I served an 8-year term in the Mississippi senate. While serving an 8-year term in the Mississippi senate, I continued the law practice. Sometime during that time approximately 10 or 12 years ago, I established my own law office and my own law shop.

Q. And what type of law do you practice?

A. Well, I have a general practice of law. We do litigation, we do personal injury. We even do some defense. We do general business, contract work.

Q. Who's in your lawyer firm? How many people?

A. There are 7 people in my law firm counting myself.

Q. What years were you in the senate?

A. I was in the senate from 1971 through 1979.

Q. And did you hold any positions in the senate in addition to being a senator?

A. Yes, I was on several committies in the senate from the first term that I served. During my second term in the senate, I served as chairman of the judiciary. I served on the finance committee. Served on a number of other committies in the senate.

Q. Do you know a man named Wiley Fairchild?

A. Yes, I do.

Q. Who is he?

A. Well, Mr. Fairchild is a businessman in Hattiesburg. He's in the construction business and the oil and gas business.

Q. Is he related to you?

A. Yes, he is related to me. His family and my family are related. I believe that he is a second cousin to me.

Q. You seem somewhat uncertain.

A. Well, calculating your kinship, I think he's a second cousin.

Q. What has been your relationship with him?

A. Well, I've had a relationship with him for a long time going back to days preceding my law school and down through the years I've represented Mr. Fairchild and Fairchild companies in various matters, various legal matters for 18 years.

Q. Is it fair to say you've been his lawyer?

A. I've been one of his lawyers. Mr. Fairchild has under his employ many lawyers. Not only in Hattiesburg but in Jackson and possibly even outside of the state, but I've been one of his lawyers, yes.

Q. Has he ever helped you personally?

A. Beg your pardon?

Q. Has he ever helped you personally?

A. Well, certainly he has helped me personally. When I went to law school, he provided me with a loan to assist me in law school and that loan was repaid with interest.

Q. Have you ever personally done business with him outside your law practice?

A. I don't believe I have in the nature of done business. I've not been in a business venture with Mr. Fairchild.

Q. Have you ever solicited money from him for campaigns?

A. Well, I would say yes, that I have because Mr. Fairchild as most everyone knows in this community is politically active in every political election year that goes around, and yes, there have been candidates that I have had an interest in and have spoken to Mr. Fairchild about assisting them, but that would be because he would have a similar interest too.

Q. You just testified that he's known to have an interest in politics?

A. Why certainly.

Q. Is he known to have relatioinships with public officials?

A. Well, Mr. Fairchild has been a very public figure for all the time I've ever known him. He served on various state agencies, boards and committies that are pointed by the governor of the state so, yes he's a public figure.

Q. Do you personally know whether or not he has involvements with public figures?

A. I don't know that I personally know that. Now I believe he has, yes.

Q. On what occasions did you seek contribution from Mr. Fairchild?

A. Well, Mr. Weingarten, I don't know the occasions that I have sought contribution from Mr. Fairchild, but sometime there have been local political races here that I may have had an interest in and knew he had an interest in and sought. That hasn't been something that has been a regular practice on my behalf. I don't as a general rule go seek a contribution from Mr. Fairchild and have not.

Q. What involvement did you have in the Evelyn Gandy campaign?

MR. FAWER: Excuse me, Your Honor. I object. I don't understand. I'd like profers to the relevance or campaign solicitation for Evelyn Gandy's gubernatorial campaign what relationship that has to this case. I ask to approach the bench to find out what that relationship is. (Bench conference).

MR. WEINGARTEN: Just wanted him to clarify Fairchild's testimony.

MR. FAWER: It was irrelevant then. It's irrelevant now.

MR. WEINGARTEN: Fairchild testified he made a substantial contribution through this man.

MR. FAWER: Can I ask a question, Judge. If something comes in which was prejudicial the first time -- excuse me. I did object to the campaign contributions information. Of what relevance is that? Why do you need to corroberate that which is irrelevant what concern is that as to whether or not he solicited funds for Evelyn Gandy. What does that have to do with Judge Nixon I. Would object.

THE COURT: Objection overruled. Proceed. (End of conference).

MR. WEINGARTEN:

Q. What was your role in the Evelyn Gandy campaign?

A. I served as the overall chairman of the campaign.

Q. And when was that?

A. 1983.

Q. What role did Fairchild play in it?

A. Mr. Fairchild has been a long time friend of Ms. Gandy and has he served on the finance council of that campaign and was very active in her campaign.

Q. What was the amount of contribution that Fairchild gave to the campaign?

A. I do not know. The records would reflect what that would be.

Q. Who's Skip Jarvis?

A. Skip Jarvis is a lawyer who was for a long time in the employ of Mr. Fairchild until he was discharged.

Q. And what was your relationship with him?

A. I didn't have a relationship with him.

Q. Any contact at all?

A. There could have been some time during the times when I worked on legal matters for Mr. Fairchild's office that Skip Jarvis had some contact with me or with my office, but that would be very limited.

Q. Who's Bud Holmes?

A. Well, Mr. Holmes is the former district attorney of Forest County. Has been a lawyer in Hattiesburg for years and years.

Q. Friend of yours?

A. Well, a friend of mine in a professional sense, yes. Mr. Holmes has been an adversary of mine down through the years in and out of the courts in this state and to that extent, that's my relationship with Mr. Holmes.

Q. Do you socialize with Mr. Holmes?

A. Not particularly, no. But that doesn't mean that I'm not at social occasions where Mr. Holmes would be. It is not a common practice for Mr. Holmes to be in my home and for me to be in his home.

Q. Do you know Walter Nixon?

A. I surely do.

Q. And how long have you known him?

A. I've been practicing law for 18 years and I've known him for 18 years.

Q. Do you consider him a friend?

A. I do consider him a friend.

Q. You say you practiced law. Have you appeared before him?

A. Well, certainly.

Q. Give us an estimate as to how many times say per year?

A. I would say that I or somebody in my law firm would appear before Judge Nixon two to three times a year would be an estimate.

Q. Would you see Judge Nixon on occasions outside of court?

A. Yes, I have.

Q. Has a personal relatonship developed between you and Judge Nixon?

A. Well, to some extent there has, yes.

Q. What extent is that?

A. Well, I think down through the years as I have practiced law here in this community I've gotten to know Judge Nixon and I think he has got to know me and so I have talked with Judge Nixon on occasions when he was not in the court. I've had lunch with Judge Nixon when he was not in court. I've had dinner with him. I think he's been in my home one time for a reception and maybe one other time. Other than that I think I went to a reception or a social occasion in his home in Ocean Springs on one occasion.

Q. Have you discussed matters with Judge Nixon above and beyond your business in court?

A. I certainly have.

Q. Has Judge Nixon discussed with you his financial situation?

A. He has indeed.

Q. And what has he said?

A. Well, sometime back when I was in the senate, I've had occasion to talk with Judge Nixon when he discussed with me the financial limitations of being a federal Judge and the burden of a large family and the necessity for him to have developed outside income.

Q. Did he indicate that fact to you more than once?

A. Sure.

Q. On how many occasions?

A. Mr. Weingarten, I don't know on how many occasions, but more than one occasion. I mean several occasions. I don't think that that was a big secret or anything insofar as Judge Nixon's thinking or what he expressed to me.

Q. I'm sorry?

A. Or what he expressed to me.

Q. Drew Fairchild, let me ask you if you knew him?

A. Beg pardon?

Q. Do you know Drew Fairchild?

A. I do know him.

Q. And how do you know him?

A. Well, I have known Drew Fairchild in a distant sort of way. I have known that he was an older son of Mr. Fairchild, Mr. Wiley Fairchild. I've known who he is. That's primarily it.

Q. All right. Did it ever come to your attention that Drew was in some trouble?

A. Yes, it did.

Q. Around when did you first learn that?

A. Well, I first learned that in November of 1980.

Q. And how had you learned that?

A. Drew Fairchild came to my office to discuss a matter that he had pending before, pending with the federal narcotics bureau, maybe the Justice Department, with respect to a drug problem.

Q. Did he specifically ask anything of you?

A. Well, he did not specifically ask anything of me. At that particular time, Drew Fairchild had worked out a plea bargain arrangement with the federal narcotics people, or either the Justice Department, whoever he worked that plea bargain arrangement out with, or working arrangement with them, and he discussed that with me.

Q. So it was just a general discussion?

A. Well, no it wasn't a general discussion. He came to my office for a purpose, to seek my advice about that arrangement.

Q. And what advice did you give him?

A. Well, when I looked at the arrangement, I told him that I thought it was a good arrangement, it provided for him to cooperate with the federal narcotics people and for him to get off with a suspended sentence, so I thought that was a good arrangement. I thought -- his attorney at that time was Mr. Bill Porter, and I thought Mr. Porter had worked out appropriate arrangements with them, and I didn't see any need for him to seek my --

Q. Did you retain him as a client?

A. I did not. He didn't retain me either.

Q. That was the end of that?

A. That was the end of that.

Q. Did you have further occasion to discuss possible employment with Drew Fairchild in his case?

A. Couple years later, I don't remember the dates, but sometime after Mr. Porter died in a plane crash, then Drew Fairchild came back to my office and that was a time after which he had been indicted in state court and his case was on the state court docket, and he came to me to talk to me about the possibility of representation in that matter. And I'm not absolutely sure he came to say I want to employ you, but the case was on the circuit court docket and he came to discuss that with me.

Q. Did you retain him as a client at that time?

A. I did not, and he didn't retain me as a lawyer.

Q. Is that the sum and you substance --

MR. FAWER: Excuse me. I object to the -- how does a lawyer retain someone as a client?

BY MR. WEINGARTEN:

Q. Did he retain you?

A. He certainly don't retain me, no.

Q. Is that the sum and substance of your contact with Drew?

A. That's the basic substance of my contact with Drew Fairchild.

Q. Did you have contact with Wiley about Drew's situation?

A. Yes, I did have contact with Mr. Wiley Fairchild about Drew's situation.

Q. What was the nature of that contact?

A. Well, the nature of that contact was that on one occasion, or it may have been more than one occasion, he talked to me about what was happening in Drew's case.

Q. What would he say?

MR. FAWER: Excuse me, Your Honor. May I again make an objection at this time. I have yet to hear a single event where the date, even an approximate date over a period of years was asked by Mr. Weingarten, and we're talking about a span of some, a period of 1979 when the gentleman says he was in the legislature and was talking to Judge Nixon, all the way down to 1984. We're just roaming. I think Mr. Weingarten has some obligation to specify the dates. I would ask that be done. Thank you.

THE COURT: You can do that on cross. Go ahead.

BY MR. WEINGARTEN:

Q. Mr. Ingram, did you have conversations with Wiley Fairchild about Drew's case?

A. Yes, I did.

Q. And beginning when?

A. Well, it was sometime after, it was sometime after the state court indictment is when I had conversation with him.

Q. All right. Do you have a fix in your mind on each occasion you spoke with Wiley Fairchild about the case?

A. Well, there is one particular incident when I did speak to Wiley Fairchild about the case. That was in the fall of 1982.

Q. Okay. In the conversations you would have with Wiley, was there a general theme expressed by Mr. Fairchild?

A. Yes, there was a general theme expressed by him. He was concerned about the press and the publicity of the Fairchild case, and that involving the Fairchild family name and he was concerned about that.

Q. Did he have a particular grievance with any form of publicity?

A. Yes, he did. He had the grievance I think primarily with the television media because it seemed to indicate that some way that reflected poorly on the Fairchild name.

Q. What was the nature of his complaint?

A. Well, that he was disturbed about that, the case seemed to keep coming up and down in the court, every time it came up for some disposition, whether it was a continuance or for sentencing or for what have you, then you had this roll of publicity.

Q. Did you become involved in a transaction between Wiley Fairchild and Judge Nixon?

A. I surely did.

Q. How did that get underway? How did that begin?

A. Well, as I mentioned a moment ago back in 1979, which was the last year I served in the Mississippi Senate, I had an occasion to visit with Judge Nixon when he expressed to me his concerns about his limitations of financial income, and his general discussion that he would like to do as some of his colleagues had done on the bench, and that's have an opportunity or an occasion to make investments in oil and gas properties.

Q. Did the general discussions ever become more specific?

A. They did.

Q. When and how?

A. Well, I would say sometime during the year of 1979 and probably later toward the end of the year he specifically asked me about the possibility of making an investment in oil properties with Mr. Wiley Fairchild.

Q. Who mentioned Wiley Fairchild first?

A. Judge Nixon did.

Q. What did he say about him?

A. Well, he just said that some of his colleagues on the bench had had occasion to make investments in oil and gas properties, and he would like to be in that -- in a position to do so if that could be done.

Q. What did he say about Mr. Fairchild specifically?

A. I don't recall that he said anything specifically about Mr. Fairchild. He knew that I represented Mr. Fairchild down through the years and had that relationship with Mr. Fairchild.

Q. Did he indicate why he wanted an oil and gas investments with Wiley Fairchild?

A. I'm assuming, Mr. Weingarten, that that would be the only person that he knew that I had any kind of a contact with or a relationship with, but that's an assumption on my part.

Q. Did he mention anything about Wiley Fairchild's business acumen or success in the oil and gas field?

A. Yes, there was discussion about that. He admired his success in that, and so does everyone else admire his success in that. He's done very, very well in the oil and gas business and has for a number of years.

Q. Did you have any knowledge of a relationship between Judge Nixon and Wiley Fairchild prior to the time Judge Nixon made the request of you?

A. I didn't have any knowledge of any relationship there.

Q. What was your reaction to Judge Nixon's request?

A. Well, my reaction to it was that he had made that request of me, and I was somewhat reluctant and delayed in my passing that request along.

Q. Why?

A. Well, I think that you're kind of on the spot about that when someone asks you to put them in an investment or put them in a relationship with someone that you have a relationship with. He's a federal judge, he's on the federal bench, I'm a lawyer in this community and in this state. So that was the context of the reluctance on my part.

Q. Why didn't you just say no if you were reluctant?

A. Well, I certainly think that that was one of the options that I had, but I don't think that just because someone is on the federal bench that that precludes him from making a legitimate investment and for seeking to make a legitimate investment, and so when I saw it in that context, even though I felt on the spot about it, felt reluctant about it, I didn't see anything improper about talking to Mr. Fairchild about it.

Q. So did you eventually contact Mr. Fairchild?

A. I did.

Q. How long a period of time elapsed between the first request and the contact?

A. Several weeks, possibly months.

Q. In the interim period did you have contact with Judge Nixon?

A. I surely did.

Q. What was the nature of the contact?

A. The contacts were brief and casual, maybe by the telephone or seeing him at some place and he would ask me about whether or not I had made contact with Mr. Fairchild.

Q. How many such conversations were there?

A. There were more than one. I don't know how many there were, Mr. Weingarten, but there were more than one.

Q. What's your best testimony on that?

A. Well, my best testimony was that there was more than one. I could say several, I could say three or four. That would be something that would be reasonable.

Q. Did you take all of Judge Nixon's calls at that time?

A. I'm not sure that I took all of his telephone calls at that time. I didn't at at a later time.

Q. At that time did you avoid his calls?

A. If I didn't avoid them, I knew that that was a part of the call that was coming, and I knew that I hadn't talked to Mr. Fairchild and I didn't have any news to give Judge Nixon.

Q. Is that in fact what happened?

A. Beg pardon?

Q. Did that in fact happen?

A. What?

Q. That you avoided the calls for that reason?

A. I would say yes.

Q. What's your best sense of when the specific request for Wiley Fairchild was made?

A. My best sense is that it was made in late 79, late 1979, maybe early 1980.

Q. And when is your best sense as to when you approached Mr. Fairchild?

MR. FAWER: Excuse me. You just asked him.

BY MR. WEINGARTEN:

Q. When Judge Nixon approached you?

A. My best sense is it was several months before that, two or three months before that.

Q. So your testimony is you approached Mr. Fairchild in late 79 or early 80?

A. Yeah.

Q. Did Judge Nixon indicates --

MR. FAWER: I heard late 79. You just added early 80.

MR. WEINGARTEN: I thought he said that.

MR. FAWER: I'd like it read back. Excuse me, sir. My understanding, I'll stand corrected if that's it, the witness is on the stand, but the question was when did you contact Mr. Wiley Fairchild.

MR. WEINGARTEN: Why don't I clarify.

MR. FAWER: Concerning the Judge's request and the witness testified his best judgment is it was late 79. If that's not so, fine. That's my understanding. What happened is Mr. Weingarten started moving it later than that.

BY MR. WEINGARTEN:

Q. Why don't we clarify. So we're perfectly clear, what is your best, let's start from the very beginning. When did Judge Nixon first talk to you about investments?

A. He talk to me about investments in the year 1979, and the reason that I believe that is that I have a belief, I have a sense that I was still in the Senate at that time. 1979 was the last year I was in the Senate.

Q. When did Judge Nixon specifically mention Wiley Fairchild for the first time?

A. I think it was in that, in the year of 1979, and probably toward the latter part of that year.

Q. And how long a period of time elapsed between the first mention of Wiley Fairchild and your contact with Wiley Fairchild?

A. I believe that I said earlier to that same question that it was several weeks, possibly months.

Q. And what caused the delay?

MR. FAWER: Your Honor, we just went through this, and we've heard the testimony. I thought we're now trying to establish the dates.

MR. WEINGARTEN: I can ask questions.

MR. FAWER: I object on the grounds it's repetitive.

THE COURT: Overruled.

THE WITNESS: The delay from, re-state your question. I'm now lost.

BY MR. WEINGARTEN:

Q. You established there was a period of time that elapsed between Judge Nixon's initial request and the time you contacted Wiley Fairchild?

A. That's correct. I think that was several weeks.

Q. And what caused that delay?

A. Well, what caused that delay was my failure to contact Mr. Fairchild.

Q. And what caused that failure?

A. Just my reluctance to contact him.

Q. Okay. What did you say to Wiley Fairchild?

MR. FAWER: I object. I thought we were heading to a point, the date. Why don't you ask --

MR. WEINGARTEN: I can ask the question any time and any way I want, Mr. Fawer.

MR. FAWER: Excuse me. A little testy this morning.

MR. WEINGARTEN: Yes, I am.

MR. FAWER: Bad weekend? Judge, with all due respect, it seems to me, I have made an objection, he said he was going to rephrase it an get an answer in terms of the contact by the witness with Wiley Fairchild. I know I can do it on cross-examination; he said that was what he was going to do and specifically --

MR. WEINGARTEN: I think I did do it.

MR. FAWER: We're -- so long as we have the date, that's fine.

THE COURT: Go ahead.

BY MR. WEINGARTEN:

Q. Do you have a specific recollection of how you contacted Mr. Fairchild on this matter?

A. I have, the recollection that I have about how I contacted Mr. Fairchild about the matter would be that I was in his office on other business, and talked to him about it.

Q. When was it?

A. When I contacted Mr. Fairchild would have been in the latter part of 1979 is my best judgment.

Q. Okay.

A. And you understand, I don't have a record of that. I don't have something I can go and pinpoint and say there is the date that I went to talk to Mr. Fairchild. That's my best sense, my best judgment of when that occurred.

Q. Why did you go just then? Why did you mention it just then?

A. Why did I mention it just then? Because that seemed a reasonable time to mention it.

Q. Why then and not before?

MR. FAWER: Your Honor, I would object.

A. I just --

MR. FAWER: I, I've sat here without objecting to questions concerning his state of mind. Now, I don't understand why the witness's state of mind is relevant in this case concerning the charges in this case. Judge Nixon concededly made a request of the witness, and the witness waited a period of time to pass the request on. The government is now inquiring what is on his mind, I submit that is irrelevant to the issues in the case. What he did do or didn't do is of course relevant, what he passed on to Wiley Fairchild or the Judge is of course relevant, but whatever is going on inside his mind is not relevant, Your Honor, to the charges against Judge Nixon, and I would object to these questions being asked.

THE COURT: Overruled.

BY MR. WEINGARTEN:

Q. Why on that specific occasion?

A. I don't have a reason to tell you why on that specific occasion. It just so happened that I was there at that office on other business, in the regular course and conduct of Mr. Fairchild's business, and my business.

Q. Were you concerned by that time that you might antagonize Judge Nixon in this case if you didn't approach Wiley Fairchild?

MR. FAWER: I would object. How is that relevant in this case? Of what relevance is that in this case to which they are claiming there was some sort of a bribe.

MR. WEINGARTEN: First of all, we've never claimed there was a bribe.

MR. FAWER: Excuse me, illegal gratuity.

MR. WEINGARTEN: The nature of the request to Carroll Ingram is very relevant, Your Honor.

MR. FAWER: Excuse me, Your Honor. How can his, he passed on the request. No one is suggesting any improper conduct on the witness's part. How can that, how can that in any way, whether he felt -- let's assume for argument's sake that he didn't want to antagonize the Judge. What has that got to do with this case? It can't have anything to do with it. He did for whatever reason, whether he was in the hospital in the interim, reluctant for whatever reason. He passes on the request. He's a conduit. What the government is trying to do is simply waltz before the jury something that could be prejudicial. Just seems to me that's not proper. I'm willing to listen to it, but why should his reluctance, excuse me, his states of mind come in in this case?

THE COURT: Overruled. Proceed.

BY MR. WEINGARTEN:

Q. Would you read back the last question, David?

(Question read.)

A. I was not concerned that I would antagonize Judge Nixon, because that wasn't a part of it. I don't want to antagonize anyone, didn't want to antagonize anybody then, but that was not a major concern of my state of mind at that time.

Q. Well why did you approach him at that particular time?

MR. FAWER: Your Honor, this question was asked and answered. That's the precise question four questions ago. He was asked that question, the witness answered, I was in the office, I don't want to just repeat what was said, I was in the office and choose it as as appropriate time to talk to Wiley Fairchild. I think incompetent on the ground it's repetitious.

BY MR. WEINGARTEN:

Q. If you delayed before, why did you finally go?

MR. FAWER: Could I have a ruling, Your Honor?

THE COURT: Overruled.

MR. FAWER: Thank you.

THE WITNESS: Because I was in the office on that particular time, it was on my mind to do that, and I did that. Because I intended to do it.

BY MR. WEINGARTEN:

Q. Did you intend to do it before?

A. I suspect that I intended to do it before, but as I said, I delayed in doing it, yes.

Q. What was Mr. Fairchild's response?

A. His response was that he would be delighted to have an opportunity to make an investment with Judge Nixon when and if an appropriate time came for him to do that.

Q. And did you report that information back to Judge Nixon?

A. I surely did.

Q. What happened in connection with this transaction from that moment?

A. Well, nothing happened for a period of time after that. Some few months after that, then Mr. Fairchild called me at my office and told me that he had an investment that he would be glad for Judge Nixon to make if Judge Nixon wanted to make it.

MR. WEINGARTEN:

Q. In the interim, the time you first approached Wiley Fairchild and the time Wiley Fairchild got back to you, did you have contact with Judge Nixon?

A. I surely did.

Q. What was the nature of that contact?

A. The nature of the contacts were when I had occasion to be in contact with Judge Nixon was an inquiry as to the progress of the possible investment.

Q. How many such inquiries were there?

A. Three or four inquiries I'd say. Several.

Q. Now what's your best testimony as to when Wiley Fairchild got back with specific information?

A. I think my best testimony is that he got back with that information in late 1979 or early 1980.

Q. That he identify wells at that time?

A. No, he didn't identify wells at that time. He identified mineral properties.

Q. And what did he say?

A. He said that he had these investments and he identified the properties where they were and he identified the valve them at that time.

Q. And your testimony is that's late 79, early 80?

A. And yes, and I would think probably in 80 is my best sense of it because it was sometime after the contact had been made to him that he came back with the investments. With the identification of the investments.

Q. Did you make any notes or take down the information in any form?

A. Yes, I did. When he called me back and gave me the properties, then I listed the properties on a note pad that was by my telephone. Made a note of it, put that note in my desk drawer and left it there.

Q. And did you date the note? Did you put down the date?

A. I surely did not. I just scribbled down on the note pad Covington County, so much, Marion County so much and Mobile so much.

Q. How were you able to place a time on this event?

A. Well, I want to tell you that has been very difficult to do and here you're trying to get me to now six years later to go back and set a sequence of time. That's impossible for me to do with a degree of accuracy when I can tell you for sure that that's the date that something occurred. But I set a frame of reference in my mind that these discussions started when I was still in the -- the last year that I was in the senate and so I started from that frame of reference.

Q. Can you fix any date in your mind in terms of this deal?

A. Why I certainly can. I can fix the date of when the instruments were delivered to my office.

Q. Okay. Why don't you start with that?

A. Okay. The instruments were delivered to my office in February or March of 1981.

Q. How did that come about?

A. That came about when Mr. Fairchild had prepared the instruments and sent them to my office.

Q. And did these instruments correspond with the information Mr. Fairchild had provided to you before?

A. No, they did not because in the instruments that he sent to my office at first, those instruments did not contain the acreage that he had identified to me in my original conversation with him.

Q. And the conversation would have been how long before you got the original deeds?

A. Several months before that. A long period of time. In fact, a long period of time had elapsed since the properties had been identified and the investment had been agreed upon until the instruments were delivered to my office.

Q. Well, if you got the instruments late February, 1981 or early March 1981?

A. That's correct.

Q. See if that can help you identify when Wiley Fairchild first provided you with the information.

A. Well, as I have just got through saying to you, I believe that he provided that information to me sometime in early 1980.

Q. Well, would it be a year that passed?

A. It could very well be a year that passed. I know it was several months that passed.

Q. Well, several months or 12 months?

A. Well, 12 months is several months and that is certainly within the realm of possibility.

Q. Well, what happened in the year between the time Wiley Fairchild identifies the properties and the time you get the deeds?

A. What happens during that year is that or during that long period of time is that the instruments were not delivered to my office. He was responsible for -- his office was responsible for preparing the instruments and they did not come to my office and there were several inquiries that were made to Mr. Fairchild about when are the instruments going to be prepared and when are they coming to my office.

Q. And what was his rejoinder?

A. That was going to get around to doing that.

Q. So your testimony is just nothing happened in the year?

A. Well, I certainly don't say nothing happened in a year because I'm a busy person and I know --

Q. In connection with this transaction?

A. Nothing happened in several months as I have just said and it is very possible that nothing happened for a year, yes.

Q. Did you know the particular mineral royalty interests?

A. I knew them only by identification by the counties and with the exception of the one in Mobile and I knew it by Mobile, not a county.

Q. Did you have any ideas about the values of these mineral interests?

A. I had no idea about the value of the mineral interest except what Mr. Fairchild told me.

Q. At any time -- do you know the oil and gas business?

A. I do not know the oil and gas business. I don't consider myself to be in the oil and gas business.

Q. When the deeds came to you, how were they dated?

A. Well, when the deeds originally came to me in February of or March of 1981, they were originally dated February 25, 1981 if my memory is correct.

Q. Why don't I show them to you?

A. Okay.

MR. WEINGARTEN: Eight, nine and ten, please.

MR. WEINGARTEN:

Q. Hand you Government's Exhibit 8, 9 and 10. See if you can identify them?

A. Exhibit No. 8 appears to be an assignment of on overriding royalty on oil and gas from W. R. Fairchild Construction Company, Limited. You can't see the back of it.

Q. Do you recognize those as the deeds that you received?

A. Yes, those were the deeds I received. I'm sure they are.

Q. And what did you do when you received them?

A. When I received them there was an error in the acreage and I sent them back to Mr. Fairchild to be corrected.

Q. And how did you know that?

A. How did I know there was an error in the acreage? Because the acreage that was contained in the royalty instruments was inconsistent with that which Mr. Fairchild had identified to me some several months before that.

Q. And you had retained a piece of paper that so indicated?

A. I'm not sure that I had retained that piece of paper for that period of time, but I knew that the acreage was incorrect that that was not the correct acreage.

Q. Do you have that piece of paper now?

A. Oh, I surely do not. That's like every day I have many, many telephone calls. I have a note pad by my desk. I make notes. Most all of the notes go in the waste can. Some go in a file and I did not keep that note.

Q. Well, how then did you recall the specific amount or acreage for each well?

A. Well, because the acreage had been identified to me that there would be so many acres in Covington County and so many acres in Marion County and the Mobile situation and it very well could have been that I had the note at that time and I referred to it, but for whatever reason, I knew that acreage was not correct and I sent the instruments back to be corrected.

Q. Did you make any other instruction or did you give any other instruction?

A. I did not give any other instruction, no. But when I talked to Mr. Fairchild about correcting the acreage, I reminded him and talked to him about the fact that he and Judge Nixon had orally entered into this agreement some several months before those instruments were delivered to my office.

Q. Well, did Wiley Fairchild and Judge Nixon orally enter into it with each other?

A. I took it that they had, yes.

Q. You believe there was contact between the two men?

A. I don't know whether or not there was contact between the two men or not. There very well could have because after that initial contact, Mr. Fairchild and Judge Nixon talked on the telephone occasionally. I do know that. So there very well could have been contact between the two of them, but that's not what I'm saying. I knew --

Q. You're talking about first contact? Not talking about the contact that took place later right?

A. Beg your pardon?

Q. What first contact are you talking about? When you said the first contact between the two men?

A. I know that after Mr. Fairchild identified the properties to me and said here is the investment and gave the value of it, identified the properties, I passed that along to Judge Nixon.

As far as I was concerned at that point, those two men had an agreement to purchase those mineral interests. And after that point, I'm confident that the two of them had some telephone conversation.

Q. Could that agreement that you've just mentioned have been enforced in a court of law?

A. Well, I don't know whether or not it could have been enforced in a court of law or not. My impression is that it could not have been because when you deal in real estate matters, you need to have some evidence or some writing some evidence of your contract in writing.

Q. There's a statute of frauds is there not?

A. Certainly there is.

Q. That means the deal has to be in writing?

A. It does but that does not -- there are many times and I don't want to argue with you about the law. There are many times that people have an agreement to do something and then carry that agreement out six months or a year later and that's an oral agreement that they carry out that they don't have a problem with and so no, I wasn't suggesting to you that if Mr. Fairchild had backed up on his agreement to sell those properties to Judge Nixon that Judge Nixon would have successful in a lawsuit against Mr. Fairchild. Wasn't contemplated.

Q. In terms of those deeds, when is Judge Nixon to get paid?

A. When does Judge Nixon get paid?

Q. By the terms of the deeds.

A. The deeds do not reflect when Judge Nixon will be paid. The deeds do reflect that if there is production on these properties that he would be paid from the time of production and that's when you are paid is from the time of production on a transfer.

Q. So the time of production determines when Judge Nixon will began to get his money?

A. Well --

Q. Is that fair?

A. No, that's not fair. You're trying to indicate something that's not there. What Mr. Fairchild sold to Judge Nixon was a royalty interest and that was like a piece of real estate. That was like selling a piece of property, okay? And so it wasn't contemplated that Judge Nixon would be paid anything unless there was production on the property. Unless there was some exploration and production on the property. Now that's my sense of it.

Q. Well, the only possibility of Judge Nixon getting anything out of this deal would be if there was production?

A. No, that's not correct. Judge Nixon could have turned around after he got these deeds and he could have done just as Mr. Fairchild did. He could have sold those interests in that property for double his profit or triple his profit and could have if the market would bear that if that was the market value.

Q. Had Judge Nixon decided to hold onto those interests within the time of production -- what would be the significance of the time of production?

A. Well, because of the time of production is that there is production on the property and then all royalty holders then are entitled to be paid according to the production.

Q. Well, what happened after you got back to Wiley Fairchild and said change the acreage and whatever else you said?

A. And as I told you, I told him that this transaction had been entered into, this agreement had been entered into some several months before that time and he was aware of that and so when the deeds came back to me, those deeds then were dated February of 1980, February 25 of 1980. In other words, they were backdated one year from that date.

Q. Well, is that the day is February 25th, 1980 the day Wiley Fairchild said yes?

A. I do not know that.

Q. Well, why was the day that Wiley Fairchild said yes put down?

A. Because I don't know whether or not Mr. Wiley Fairchild knew at that time the exact date. I mean I don't know that.

Q. Did you know the exact date?

A. No, I did not.

Q. The reason you didn't is because it had absolutely no significance whatever?

A. Well, it does.

MR. FAWER: Is this cross or direct? I would object to the leading nature of the questions. I'm getting a sense that this is a cross examination and I think this is his witness as spoken in opening and promised. I would object.

THE COURT: Overruled.

THE WITNESS:

A. Beg your pardon?

Q. Well, I mean the question is why was 2-25-80 selected?

A. I don't know. Mr. Fairchild or Mr. Fairchild's office selected that date and I do not know why that date was selected. I assumed that Mr. Fairchild was attempting to approximate the date and the time when this transaction took place.

Q. Well, if it was significant to put the date down when the transaction took place, why wasn't the date put down when the transaction took place?

MR. FAWER: I would object. If the man testified that he didn't prepare the date, that was done in another office without his involvement. He's being asked now by this gentleman why someone else is the operation of someone else's mind and I think that's improper under the rulings of evidence and he can't give an answer to that.

MR. WEINGARTEN: Your Honor, he was the one who initiated the process of the backdating. I think it's appropriate.

MR. FAWER: I have no quarrel about that he said that. But he initiated that and came back with a date and he explained why it had that date and that date.

THE WITNESS: I don't know that I initiated that. I mean --

MR. WEINGARTEN: Don't --

MR. FAWER: Excuse me. He had sent it back, Your Honor, and then with the discussion with Wiley Fairchild and then it comes back to him with a date 2-25-80 and he explained that date as far as he knows approximates the date that Wiley Fairchild told him, Mr. Ingram, of the acreage, the location the acreage and the location and the amount of money that would cost Judge Nixon and that's where we are. And now he wants to know why Wiley did certain thing and he's not present there.

THE COURT: If he knows he can say so. If he doesn't know he can also say so. Go ahead.

MR. WEINGARTEN: Could you read the question?

(Question read).

MR. WEINGARTEN:

Q. Do you understand that?

A. I understand that and my answer, Mr. Weingarten, is that I do not know -- if that was not the date then I do not know why

Mr. Fairchild didn't put the date.

Q. Well, why didn't you fix it to the point of time when the deal actually was reached?

A. Because, I did not know specifically the date and that particular date that was in the deed when it came back to me certainly did not offend me. That was not a problem for me. I had assumed that what was being done there was an approximation of the date when the agreement was made, but I did not know that. There was no way for me to know.

Q. You didn't have knowledge of the specific date? You didn't note down when Wiley Fairchild said yes or when Judge Nixon said yes?

A. No, I did not.

Q. And that's because it had absolutely no significance?

A. No, that is not because it had no significance because it was important. The date that they agreed upon is very important.

Q. Why didn't you note it down?

A. Beg your pardon?

Q. Why didn't you note it down?

A. Because I didn't note it down. Now I didn't have a reason to note it down.

Q. Is it fair to say February 25th, 1980 was just a date picked out of the air?

MR. FAWER: Your Honor, this is cross examination of his own witness. Is it fair to say. This is a leading improper examination. It's his witness. The man is trying to answer the questions. He can ask direct questions that are not leading and I would object. If this goes on again and again I think there's a point at which we should have this done as a direct examination and not one in which he deals with him as if he's a hostile witness.

MR. WEINGARTEN: I request permission to proceed, Your Honor.

MR. FAWER: I request permission to have him ordered and proceed along the rules of evidence.

THE COURT: Sustain the objection.

MR. WEINGARTEN:

Q. Why wasn't the initial date left?

A. Beg you pardon?

Q. Why wasn't the initial date left?

A. Well, because it was clear to Mr. Fairchild and to me so far as I knew that February 25, 1981 was not when the agreement was reached between the two of them for this sale to take place.

Q. Was February 25th, 1981 the day the deal was legally enforceable?

A. I would certainly say that after the deeds were executed by Mr. Fairchild then the deal was legally enforceable. Now whether or not it was legally enforceable before that time, I haven't been called on to give a legal opinion about it.

Q. Well, what was the point of the backdating?

A. The point of the backdating so far as I knew was that it was obvious that the mineral agreement the agreement to sell those royalty properties was not agreed upon in February of 1918. But was agreed upon several months before that as I have said earlier.

Q. Well why was that significant?

A. Well, I think it's significant in many, many occasions that the deed or the contract or the writing which you have try to reflect an appropriate time when the transaction took place, when the agreement took place.

Q. Was there any concern on your part that the value of the mineral royalty interest could be very different in 1981 than 1980?

A. Yes, indeed.

Q. And what was your concern?

A. My concern was that if this agreement was made, which it was, some several months before the deeds were delivered to my office, then oil properties are many times volatile, so, the value in those properties could change significantly in a matter of a few months, so it would be important for the date to be placed on them.

Q. Did you ever know whether or not the values of these wells changed significantly over the months?

A. I did not. And I do know. The value of these minerals were set by Mr. Fairchild. He told me what the value was. I did not know what the value was. If the value was something different, then it was for, his responsibility to tell me that.

Q. What arrangements were made with Judge Nixon to pay for these interests?

A. The arrangements were made for Judge Nixon to pay for those interests by an indebtedness, evidence of an indebtedness by notes.

Q. How did that come about?

A. That came about when Mr. Fairchild identified the properties to me and identified the values, and I passed that to Judge Nixon. I told Judge Nixon about that, told him that there would be a requirement of a payment of ninety-five hundred dollars for those transactions, then Judge Nixon's response was I need for you to give me some advance time to know about that, because I'll have to make arrangements for my payment on that. I passed that word to Mr. Fairchild, and he said that he would be glad to advance, to make an advance of that to Judge Nixon, to carry the paper himself.

Q. Did you testify that Wiley Fairchild set specific amounts for the mineral royalty interest?

A. He set the total amount.

Q. What?

A. He basically set the relative value of the particular properties in his discussions with me.

Q. And when would that have been?

A. That would have been when he identified the properties to me.

Q. Did Judge Nixon indicate to you an amount that he was interested in spending?

A. It could have been that at some time in our discussions that Judge Nixon gave me a range or the type of investment he was making, but no, he did not give me a specific amount.

Q. What range would he have spoken of?

A. I don't even have a recollection of a range, but I know that when the value of minerals were set at ninety-five hundred dollars, that was in that range.

Q. By the way, did Judge Nixon ever discuss other minerals investments he was making?

A. He told me that he was attempting to make other mineral investments, and he was either going to make them or had made them.

Q. When did he mention that to you?

A. End of 1979, 1980, all along in this time.

Q. When he first raised the possibility of an oil and gas investment with you, did he indicate to you that he had other investments?

A. I have the sense or the belief that he did have other investments, but he didn't say, hey, I've got minerals over in Clark County or Wayne County or somewhere like that, but I had the sense that he did have other investments or he was making other investments.

Q. How did it come about that notes were prepared?

A. Well, when the deeds were delivered to my office, then I prepared the notes in my office to conform to those deeds.

Q. So you actually prepared the notes?

A. I surely did, yes.

Q. 15, 16, and 17, please. I hand you Government Exhibit 15, 16, and 17, ask you if you can identify them.

A. These appear to be the notes that were prepared. They have been marked paid.

Q. Just so we're clear on our dates, they would have been prepared when?

A. They would have been prepared in February or March of 1981.

Q. And how were the values of the specific notes set? I guess there -- are there three different volumes?

A. Right, there are three different values. And those values were set in a general discussion with Mr. Fairchild about the relative values of those properties.

Q. Who put the numbers down, did you?

A. I put the numbers down on the specific notes based on my conversation with Mr. Fairchild.

Q. Did he give you specific figures or did he just give you a general instruction and you set the figures?

A. He gave me the value of the properties to be ninety-five hundred dollars. And he talked to me about the general values of the particular counties, and what I did, and I guess I did it in a sense of trying to be correct in it, I thought that the notes ought to be broken down into three notes since there were three pieces of property. But no, Mr. Fairchild didn't say put two thousand dollars on that one or the other one, but he did give me a sense of the values, of the relative values of those properties with, in my discussion with him.

Q. Did he ask you to prepare the notes?

A. I'm not absolutely sure that -- I want to go back and say yes he asked me to prepare the notes, because there was a discussion about how you handled this. And so out of our discussion grew the preparation of the notes, and I would say that I would not have prepared the notes had he not wanted me to prepare the notes. It wasn't that I volunteered to prepare the notes.

Q. And when was that discussion? Was that early on?

A. That was sometime after we had identified the properties that were there and had had agreements that the transaction would be made.

Q. And when did you prepare the notes, again?

A. I prepared the notes in February or March of 1981.

Q. Do you recall testifying in the grand jury on February 25, 1985?

A. I surely did.

Q. Do you recall saying that it was your idea to prepare the notes?

A. I very could have said it was my idea to prepare the notes. I know I thought I thought the notes should be prepared.

Q. If you testified that way, how does that square with what you're saying now?

A. Because when I talked to Mr. Fairchild about the preparation of the notes, certainly he wanted me to prepare the notes. I think it's fair to say he did. I mean this is his transaction, he's making the sale. He had the choice of allowing me to prepare the notes, to have any one of his other lawyers to prepare the notes, that was a choice that he had to make. That wasn't something that was solely within my discretion to do.

Q. I guess you were saying it was your idea after you got the deeds just to prepare notes?

A. Yes, I had a sense, I have a belief that probably what would have happened is Mr. Fairchild would have carried this as a book entry, and I certainly felt then and I do now that notes should have been prepared to evidence that debt.

Q. Okay. Did there come a time when Judge Nixon received these documents that you received and you prepared?

A. Yes, indeed.

Q. On what occasion?

A. Well, sometime after I had, some few days or weeks after I had received the deeds I took them to Judge Nixon in Biloxi, and had him sign the notes.

Q. All right. What's your best sense as to when that would be?

A. Some few weeks after I received those deeds is my best sense.

Q. So you brought the backdated deeds and you brought the notes that you prepared?

A. That's correct. And Judge Nixon signed them.

Q. What's the date of the notes?

A. The date of the notes, February 25, 1980.

Q. So you backdated the notes to correspond with the deeds?

A. I conformed the notes to the deeds, yes, to correspond with the deeds.

Q. Did you discuss the dating of these instruments with Judge Nixon?

A. I surely did.

Q. What did you say?

A. There wasn't a whole lot to be said except that these are the instruments and here are the notes to be signed and he signed them.

Q. What did you say about the dating?

A. I don't know that he said anything about the dating except that he acknowledged that the instruments were there.

Q. What explanation did you give?

A. Well, as I recall I said to him, or I had some conversation to the effect that as you know, this agreement has been made some several months beforehand to purchase these minerals and these royalty interests. Of course Judge Nixon knew that because he had been asking me when were the deeds to going to be delivered. It was some period in, long time, Judge Nixon asked me several times when are they going to be delivered. So he was aware of that.

Q. Did you give him an explanation of why it was necessary to do that?

A. I suspect, I probably in the discussion probably told him that this, there needed to be a reflection of an accurate consideration, again my concern that this agreement had been reached some several months beforehand and that there could be some change in the value of those properties.

Q. Were you specifically concerned that the properties could be very much more valuable at the time of delivery than they were before?

A. They absolutely could be much more valuable at the time of the delivery than they were before, and by the reverse token, they could be worthless at that time.

Q. You had Judge Nixon signed sign the notes?

A. I surely did.

Q. What's indicated on the notes immediately above the signature line?

A. Above the signature line is that the notes were executed on February 25, 1980.

Q. Does it say witness execution hereof on this the 25th day of February 1980?

A. Absolutely.

Q. Is that when Judge Nixon signed these notes?

A. No. As I just got through saying, he signed those notes sometime after February or March of 1981.

Q. Why didn't you draft the notes to reflect he signed it on the date he signed it, but reflected it was an agreement reached before?

A. I certainly think that was an option I could have done, either way it has the same effect. There isn't anything out of the ordinary or unusual to have instruments prepared in the way I had them prepared.

Q. You've had the judge sign an instrument witnessing execution on a day when he didn't sign it?

A. I understand that. There is not anything unusual about that, there isn't anything illegal about that, there isn't anything unethical about that, there isn't anything out of the ordinary about that.

Q. If someone simply looked at this nogotiable promissory note, wanted to know when it was signed, what conclusion would they come to?

A. They would conclude it was signed on that date, and between these two parties insofar as that's concerned, that was when the note was signed and the two parties were abiding by that.

Q. In fact by that signature you had Judge Nixon obligated to pay interest an extra year, did you not?

A. I did not have --

MR. FAWER: Excuse me. When I stand for an objection. "In fact" is a leading question. I've been sitting here, he's drifting back into leading questions again. I have no objection to his asking specific questions, but if they're leading I think he has a tendency to argue; it's best we keep them on the same rein that the rules of evidence provide.

THE COURT: Sustained.

BY MR. WEINGARTEN:

Q. Did these notes obligates Judge Nixon to pay interest from 1980?

A. They did. Insofar as I know he did. And there was certainly no objection on his part or Mr. Fairchild's part.

Q. Judge Nixon didn't object to paying interest --

A. Certainly not.

Q. -- from February 1980 to the time he signed the documents?

A. He did not. I believe he recognized he had made an agreement to make the notes some several months previous to that and he was obligated to pay it.

Q. Just summarize if you would, all told, your role in this, what activity you personally, Carroll Ingram did in this transaction.

MR. FAWER: What do you mean summarize your role. He's just taken him --

MR. WEINGARTEN: I'll clarify that.

BY MR. WEINGARTEN:

Q. Did you prepare the notes?

A. I prepared the notes.

Q. Did you have contact with Mr. Fairchild?

A. I certainly did.

Q. Did you have contact with Judge Nixon?

A. I did.

Q. Did you record the instruments?

A. I did.

Q. Did you have correspondence with oil companies?

A. I think I had one correspondence in there, I'm not sure, Mr. Weingarten. Whatever the records reflect, I've given those records to you before, so whatever they reflect about the correspondence is what they reflect.

Q. Did this take some time?

A. Yes.

Q. When you recorded the documents, were there recording fees?

A. Yes, I'm sure there were regular nominal recording fees.

Q. And who paid the fees?

A. Well, I'm not sure who paid for them. My law office is, as a normal rule, sent an instrument to be recorded, they don't bill the person, they bill the law office. I'm sure my law office paid for the recording of them. I'm not sure but what I may have put that on the, Mr. Fairchild's miscellaneous expense billings. That could havae happened. I'm not sure that it did happen.

Q. Whose deeds were they?

A. They were deeds that Mr. Fairchild's office had prepared to be delivered to Judge Nixon, and so at that point they were Judge Nixon's.

Q. Thank you. Did you ever get paid, you personally, for your work?

A. I certainly did not. Did not get paid a dime.

MR. WEINGARTEN: Your Honor, is this a good time to take our morning recess?

THE COURT: Yeah, we're going to take a recess.

(Recess.)

MR. WEINGARTEN: Proceed, Your Honor?

THE COURT: Please.

MR. WEINGARTEN:

Q. Mr. Ingram, just a few more questions about this transaction. What was Skip Jarvis's role in all this; do you know?

A. I do not know what his entire role was. As I said a moment ago, he was a lawyer that worked at the Fairchild office.

Q. Was there ever an occasion when you had discussions with him about this?

A. No, I did not. The only possible discussion that I may have had with Skip Jarvis would be some long time into the situation when division orders or something like that, you know, a long time after the transaction had taken place.

Q. When you say taken place, the oral agreement reached or the formal?

A. Both. The oral agreement then when the documents were delivered, I did not talk to Skip Jarvis about these documents at all.

Q. When the documents were delivered, was the -- when the documents were first delivered was Judge Nixon identified as the grantee?

A. I believe that when the documents were first delivered that he may not have been identified as the grantee.

Q. And do you know why that would have been?

A. No, I did not. There's not a lot unusual about that. Many times you don't know whether or not you're going to put properties in husband and wife's name or just exactly how the grantee would be listed.

Q. Was the grantee left in blank pursuant to your instruction?

A. Oh, no absolutely not.

Q. So you had nothing to do with it?

A. No.

Q. And had no knowledge of it?

A. Beg your pardon?

Q. And no knowledge of it until you received them?

A. Right.

Q. The notes that Judge Nixon signed were kept where?

A. Well, I brought them back with me to my office and we were kept in my office for several weeks until I received a phone call from the Fairchild office an inquiry about them.

Q. Do you know it to be a period of weeks?

A. I know it to be a period of sometime, Mr. Weingarten. Now how long a period of time it was, I don't know that.

Q. And pursuant to the call what did you do?

A. I delivered the notes to the Fairchild office.

Q. Did you do that personally?

A. No, I don't think so. I think I put them in an envelope and they were picked up.

Q. Were you aware of any meeting between Judge Nixon and Wiley

Fairchild?

A. Yes, I was aware of that. Sometime after this agreement had been reached between the two of them, Mr. Fairchild said that he would like to have coffee with Judge Nixon at sometime when it was convenient to do so. I said that to Judge Nixon and sometime later Judge Nixon and Mr. Fairchild had coffee at Mr. Fairchild's office.

Q. And what do you recall about that meeting?

A. Well, it was a meeting where I believe I met Judge Nixon and Mr. Fairchild out at the office. It happened in the morning time about 11:00. Was about a 20 or probably about a 20 minute meeting. It was a time when they had coffee, a time when they expressed pleasure about this transaction that they had done and they visited together.

Q. Could you tell whether or not this was the first time the men had met?

A. No, I could not tell whether or not it was the first time that they had met. I don't know of their having met personally before, but it wouldn't be unusual or I just wouldn't know whether they had met personally before that or not.

Q. You couldn't tell from the greeting?

A. Not really. I didn't have that --

Q. Was there a time when the two men were alone?

A. Yes, there was a time they spent alone. I excused myself and allowed them to visit. It was primarily their visit, not mine.

Q. To your knowledge was there further contact between Judge Nixon and Wiley Fairchild?

A. Yes, there was. I was aware that Judge Nixon and Mr. Fairchild were talking with each other on the telephone. I don't know on what kind or basis of regularity that was, but I got the impression that it was occasionally that they talked on the telephone and may have even met personally together without my knowledge. I know that they did have contact after that.

Q. Did it ever come to your attention that Wiley Fairchild and Judge Nixon had contact about Drew Fairchild's case?

A. Yes, it did. Sometime in the late fall of 1982, Mr. Fairchild told me that he had asked Judge Nixon to talk to Mr. Holmes about Drew Fairchild's case.

Q. What else did he say to you?

A. Said that Judge Nixon had talked to him and Judge Nixon had confirmed that he had talked to him.

Q. And did he get any result from Judge Nixon?

A. Well, the results that he indicated to me were that the results were positive that he had in fact talked to him and that those results were positive.

Q. In what sense positive?

A. In a sense of well being that Drew Fairchild's case was going to be okay.

Q. And where did Wiley Fairchild say he got this information?

A. Said I got it from Judge Nixon.

Q. Do you have personal knowledge of Drew Fairchild's case being passed to the file?

A. Well, I know it was passed to the files the latter part of December, 1982 and sometime after it was passed to the files, the district attorneys office, Mr. Holmes, gave me a copy of the order that passed to the files and asked me to send it to Mr. Fairchild and I did.

Q. Did the information you received from Mr. Fairchild about his contact with Judge Nixon come before or after the case was passed to the file?

A. Came before the case was passed to the file.

Q. Did Judge Nixon ever discuss with you his involvement of Drew Fairchild's case?

A. Judge Nixon did not discuss with me because I'll qualify the term discuss. But Judge Nixon did indicate to me that he had talked with Mr. Holmes about Drew Fairchild's case and that he had -- he told me that.

Q. Did he indicate to you why he had spoken to Duo Holmes about Drew Fairchild's case?

A. Because Mr. Fairchild had asked him to.

Q. And did he indicate to you anything that Mr. Holmes may have done or said about Drew Fairchild's case?

A. The indication was that he talked to Mr. Holmes about it and that Mr. Holmes was -- I would say that Mr. Holmes would give consideration to his request. There was a good feeling or a good positive reaction to that.

Q. Did Judge Nixon indicate to you why he had gone to Bud Holmes?

A. Well, no, he didn't indicate why he did. He just told me that Mr. Fairchild asked him to.

Q. Did he indicate to you why Mr. Fairchild asked him to?

A. Mr. Weingarten, I'm not sure he did. I'm not sure he did indicate to me why he went to Mr. Holmes.

Q. Was this conversation with Judge Nixon by telephone or in person?

A. It was by telephone.

Q. Do you recall where you were during the conversation?

A. I think I was at my office, but I'm not absolutely sure about that.

Q. And do you recall who placed the call?

A. No, I do not. I sure do not.

Q. How was the conversation how did it begin? How did the subject come up?

A. Well, in the context of talking with Judge Nixon, he just simply indicated to me that he had talked to Mr. Holmes about Drew Fairchild's case. That was really -- it was really a passing comment, an understated thing that wasn't a full discussion about it.

Q. Did it pass into something else?

A. Oh, I'm sure it did. Whatever the subject matter we were talking about. I'm sure it did pass into something else.

Q. Did the subject matter have anything to do with Wiley Fairchild?

A. Now I don't know that. It very well could but I don't know that.

Q. Contemporaneous with that conversation had you been having other conversations with Judge Nixon about Wiley Fairchild?

A. Certainly I have.

Q. What were those conversations about?

A. Concerning his relationship with Mr. Fairchild. They were talking on the telephone. I had the impression may even be seeing each other, but I didn't know that, didn't inquire about it. Judge Nixon and Mr. Fairchild were working on other possible mineral transactions, mineral purchases.

Q. And did Judge Nixon make any request of you in connection with other possible investments?

A. No, he didn't make any request of me, but I think that he wanted me to be favorably informed and advised about it. I didn't view it as necessarily a request for me to go do something about it, but I think that he wanted me to be in the posture of being helpful to him if I could.

Q. Well, do you recall testifying in the grand jury that he did request of you to be of assistance in further transactions?

A. If I testified to that, then I certainly did testify to it, and that is not inconsistent with what I'm telling you now. Judge Nixon did not on a second occasion say to me hey, I want you to go specifically and talk to Mr. Fairchild about another mineral transaction. Not one time did he do that. But I think there was an underlying, pending feeling that their first transaction had been successful and that he certainly wanted me to be in a position that if I could be of assistance to him to be that way, but now he didn't specifically ask me to go and perform a mission for him and that is not in my judgment inconsistent with what I've testified in the grand jury and if it is, I want you to read it and let's talk about it. I'm certainly not trying to deny anything --

Q. Mr. Ingram --

A. -- that I said in the grand jury.

Q. You can refresh your recollection to your prior testimony.

A. I understand that and I'm willing to have my recollection refreshed, but I also want some fairness, too.

Q. Would you like to see your grand jury --

MR. FAWER: Is this your source? Is this a lecture? Apparently there's a debate going on on rules of procedure by your witness. I guess I don't have standing because the witness can handle himself. I don't know what this is now into. Is there a question on the floor at this point?

MR. WEINGARTEN: I'm about to pose one.

THE WITNESS: In the grand jury --

MR. WEINGARTEN: I wasn't intending to go unless Mr. Ingram wants to see his grand jury.

THE WITNESS:

A. I don't want anything except that you asked me if I testified to that and I don't think I testified in an inconsistent manner.

Q. Mr. Ingram, that wasn't the implication of the question.

MR. FAWER: I so interpreted that way, Your Honor.

MR. WEINGARTEN: Why don't we move along.

THE COURT: All right.

MR. WEINGARTEN:

Q. Did you have contact at this time with Judge Nixon about his business relationship with Wiley Fairchild?

A. Yes, I did and the ordinary course of a contact when I might see Judge Nixon somewhere. You know, it was not unusual for him to say well, I talked to Mr. Fairchild and I don't think he called him Mr. Fairchild. I talked to Wiley on a certain time or something of that nature. Wasn't unusual for that to happen.

Q. Did you ever have conversations with Bud Holmes about this contact with Judge Nixon on the Drew Fairchild issue? I'm not sure that was clear.

A. I'm not sure I understood the question.

Q. Did you ever have conversations with Bud Holmes about any contact he may have had with Judge Nixon about Drew's case?

A. Yes, I did.

Q. How do you recall when?

A. Well, yes I do. I recall that that was a time after July of 1984.

Q. And --

A. That was after a time when the grand jury investigation had begun in this case and I had testified before the grand jury.

Q. And what's your recollection of your contact with Holmes?

A. Well, sometime after the contact -- I mean sometime after my testimony in the grand jury and July of 1974 and I don't know when the exact time of that conversation took place, but shortly after that testimony, Mr. Holmes came to my office and talked to me generally about what I had been questioned about before the grand jury.

Q. All right. And did he provide you with any information that you didn't know?

A. Well, in his questioning of me he did, yes. He provided me with information I didn't know and that was concerning a telephone conversation that occurred from his home.

Q. What did he say about it?

A. Well, he asked me if I had been questioned before the grand jury about a telephone conversation between Judge Nixon and Mr. Fairchild from his home.

Q. And at that point had you been?

A. And that point I hadn't been questioned about it and except for the references from Judge Nixon and Mr. Fairchild which were sketchy and I didn't have a complete scenario of the telephone call, that was news to me. Mr. Holmes was telling me something I didn't know about.

Q. And what did Mr. Holmes say about it?

A. Well, he basically told me about the telephone call and about how it occurred that it occurred at night told me that. He told me the basic content of the telephone call. He asked me if I thought that Mr. Fairchild taped the telephone call and I responded to him that I had no way of knowing whether or not Mr. Fairchild taped the telephone call and didn't know whether or not he taped it that that wasn't something within my knowledge.

Q. What did he say about the content of the call?

A. Well, the content of the telephone call was that Judge Nixon called Mr. Fairchild from his home and that he said that Judge Nixon told him he had spoken with Mr. Holmes about Drew Fairchild's case and the substance of it was that things are going to be okay. Everything's going to be all right in his case. He didn't have anything to worry about or something to that nature.

Q. Did Bud Holmes express any concern about the call?

A. Well, surely he expressed concerned about it that's why he asked about it.

Q. Did he indicate how he recalled the context of the investigation?

A. I don't know whether he did at that particular time or not but at sometime later on when a discussion was had about the telephone call, he said that he was concerned about that telephone call and that that was the most significant thing he was concerned about it or that was more concern to him than anything else in the investigation.

Q. Did you maintain contact with Holmes about this subject over the next months?

A. I did on an occasional basis. He would come to my office or see me in the parking lot or our offices are across the street and so we parked at that time parked in the same parking lot.

Q. Did there come a time in January or February, 1985 when he asked specifically about the phone call?

A. Yes, he did. In January or February of 1985 and I have a note somewhere at my office or somewhere when an inquiry was made, Mr. Holmes came to my office because there had been a news report that I had visited with you and Mr. Holmes came to my office and talked to me about my visit with you and he asked me if you had inquired of me about the telephone, that particular telephone call and when he asked if you knew about the telephone call, I said you did know about the telephone call, that you had known about the telephone call for some significant period of time and that you had specifically asked me about the telephone call and that I told you that I in fact did know about the telephone call and that was the first time that I had been asked about that telephone call.

Q. And everything you were telling Mr. Holmes was precisely the truth?

A. Beg pardon?

Q. Everything you were telling Mr. Holmes at this point was exactly the truth?

A. That's correct.

Q. And what was his response?

A. And his response was, well, that's not good. He was upset about it.

Q. Following that, did you have further conversations with Mr. Holmes about the phone call?

A. I did. That particular conversation that we just got through going through occurred on a Friday about noontime, close to noontime. Then the following Tuesday evening he came to my office, I believe it was Tuesday, the following Tuesday, came to my office, and at that time he again inquired of me about your knowledge, I'm talking about the government's knowledge, about that telephone call. And then at that point said that could not I have been confused about my recollection of the telephone call, at which time I told him I was not confused about it.

Q. You held firm?

A. Well, hold firm or whatever. I was not confused about it, I knew about the telephone call, and you or the government already had long since known about the telephone call, and when

I was asked about it, I said yes, that I knew about the telephone call, I certainly wasn't going to tell something else.

Q. Did Holmes indicate whether or not he had a trip scheduled to the grand jury immediately following, or in the near future?

A. He did indicate to me he was going to appear before the grand jury.

Q. What was Mr. Holmes' reaction to your saying that you were not going to change any version about the phone call?

A. It was sort of a so be it thing, if you've said it, it's said.

Q. Following the initiation of the grand jury investigation did you have -- initiation of the investigation, did you have contact with Judge Nixon?

A. Following what now?

Q. Did you have contact with Judge Nixon -- did you have any contact with Judge Nixon about the investigation?

A. Yes, I did. In April of 1984 I received a telephone call at my office from Judge Nixon. Judge Nixon was concerned, upset, and I think I described to you that he was hot, meaning that he was upset. He was upset that he had been interviewed either that day or the day before, he'd been immediately interviewed by the Justice Department or someone concerning this transaction up here. He didn't know what was going on he said, and that he didn't understand what the interview or the investigation was about, and he was upset about it.

Q. Did he indicate anything to you about the telephone line?

A. Oh, in that he said to me, he said I'm calling you because I don't understand what this investigation is about, I have a right to make this telephone call to you, this line may be recorded, our conversation may be recorded, but that makes no difference, I have a right to call you and tell you that I've been interviewed and to say to you that I don't know what's going on up there.

Q. All right. Did you record that conversation?

A. Absolutely not. And I don't record conversations.

Q. Do you know if he was recording the conversation?

A. No, I do not. Did not suspect that he was.

Q. The conversation that you had with Judge Nixon about his involvement with Drew's case took place when?

A. Well, it took place sometime after Mr. Fairchild told me about that telephone conversation. Now I do not know exactly when that telephone conversation took place between Judge Nixon and I.

MR. WEINGARTEN: Thank you, Mr. Ingram.

MR. FAWER: May I, Your Honor?

CROSS-EXAMINATION

BY MR. FAWER:

Q. Mr. Ingram, we have spoken before, am I correct?

A. Yes, sir, we have.

Q. Okay. I think it may be useful for the jury, contrary to what's been done, deal chronologically with some of these events. Let's start at the end of it so we can clear up some of the last things that were just asked of you.

A. Okay.

Q. If I understand correctly, prior to April of 1984, using that as the touchstone, you had really had no contact, earlier that year, with anyone -- there was no investigation, no nothing you knew of going on, is that correct? A fair statement?

A. That's correct. In fact, I would, it's my honest belief Judge Nixon's telephone call alerted me to the fact that an investigation was going on.

Q. Is it fair to say what he next -- the first thing you heard about such an investigation was a call from him in which as you describe it, he was very upset?

A. Certainly he was.

Q. And he, did he seem perplexed at what was going on?

A. He did.

Q. Did he suggest to you or mention to you that what they seemed to be, they, Reid Weingarten, whoever else questioned him that day in his office, did they indicate to you -- did he indicate to you that they seemed to be making some connection between this oil and gas transaction which you have told us, and the Drew Fairchild case?

A. I think that's correct, yes.

Q. First of all, let me ask you this, I don't think it's been asked. Tell the jury whether there was any connection whatsoever in your mind as you sit there now from 1979 to this minute, is there any connection whatsoever between that oil and gas transaction between Wiley Fairchild and Judge Nixon and the Drew Fairchild case?

A. None whatsoever.

Q. Have you made this clear to the government since day one?

A. Since day one.

Q. Have they looked at you with some incredulity when you tried to tell them of this?

A. Well, I don't know how they look at me. I have told them that from the beginning.

Q. Okay. You have no doubt about that, am I correct?

A. I have no doubt about that.

Q. To your knowledge, did Judge Nixon, when he called you on April 19, tell you that that was the thrust of what they had been questioning him about that day?

A. There was not a real long discussion between Judge Nixon and I in April of 1984. By the way, that is the last time that I have talked to Judge Nixon since that time.

Q. About this matter?

A. About this matter, because I felt that that was inappropriate to do so. And not for any other reason, but its apropriateness.

Q. Mr. Ingram, when he called you did he make any suggestion to you whatsoever he thought you ought to testify in any way or make any suggestion how the facts should fall in any way, did he do anything of that sort?

A. No, I think the call Judge Nixon made to me, he was upset he had been interviewed that day, he was upset about the fact that the investigation was going on, and I think that was it.

Q. By the way, did he tell you that there had been a taping of his conversation with the FBI?

A. I believe he did, but, I thought it was that day. It might not have been that day.

Q. I think you're accurate that it was, April 19th. When he mentioned to you that he was talking to you because he thought it was inappropriate as you described, and that perhaps somebody was recording it, but he didn't care, he had a right to make the call, is that correct?

A. That's correct.

Q. Who did you understand he was talking about that might have recorded the conversation?

A. I understood that he felt that maybe the government was taping the conversation.

Q. Have you had such feelings yourself that the government subsequent to that day had, contrary to your acquiescence, taped your conversations? Specifically when you were interviewed on May 10th?

A. I think they did.

Q. Okay. Despite their representations to you to the contrary?

A. That's correct. The basis for that is of the report that was subsequently made.

Q. I want the jury to understand something. From that point forward, Judge Nixon, you chose not to speak to Judge Nixon, and Judge Nixon apparently chooses not to speak to you?

A. That's correct.

Q. You are interviewed by the FBI or Department of Justice when?

A. In May of 1984.

Q. Okay. You are asked to come to the grand jury in the latter part of July or around -- right about the same time as Judge Nixon and the others, correct?

A. That's correct.

Q. Tell the jury between April 19th, the day Judge Nixon spoke to you, and the time you went to the grand jury, did Bud Holmes talk to you at all during that period of time about this subject?

A. Between April.

Q. 19th, the date Judge Nixon called you, and the time you went to the grand jury on July 19th or 20th, I forget?

A. I'm sure he probably did.

Q. About this subject? Let me, did he ever talk to you about this telephone call?

A. New York did he not.

Q. That's what I I want -- you're sure of that?

A. That's my best memory, now --

Q. When did he first, had he already so far as you know, Holmes, already gone to the grand jury when he first raised the subject of the phone call?

A. I think Mr. Holmes had been from the grand jury to testify and so had I.

Q. So it has to be after July 20th, correct? What date he did testify?

A. I thought it was July 19th. The date is on the transcript.

Q. Accept that representation. After the 19th or 20th when you and he were at the grand jury. At that time when he was expressing, when he mentioned this telephone call, was it your impression that he was concerned insofar as he, Bud Holmes was making -- I'll rephrase that. Did you get the impression from him that it was he, Bud Holmes, was concerned that you had been questioned about the phone call?

A. He asked me, after my grand jury testimony, had I been questioned about that telephone call.

Q. Was there any suggestion in your mind that he was doing that at the request of Judge Nixon?

A. No, there was no suggestion of that.

Q. At that time, he asked you as I understand it whether you believe or knew whether the call from his farm had been taped, am I right?

A. He did ask me that.

Q. Was there any suggestion he was being asked to do that by anybody else?

A. I just assumed that was a part of the inquiry that he was making of me. I didn't assume that --

Q. From what I gather, he, during that period from then on, would run into you on occasion, might ask what's going on in the investigation, kiss the breath, but no real lengthy discussion until sometime in February, is that correct?

A. And that is correct. And I tried to avoid any lengthy discussion about this, about this grand jury investigation, because I thought it was inappropriate to do so.

Q. Okay. I mean in terms of avoiding Bud Holmes in particular, how would you describe his proclivity to shoot his mouth off?

A. I don't think that's an appropriate thing for me to describe in this courtroom.

Q. Well, I ask you to. And I think it is.

MR. WEINGARTEN: I respectfully object.

BY MR. FAWER:

Q. I'll rephrase it. How would you describe Bud Holmes' proclivity, propensityh, to find out what's going on about any event that he is personally interested in?

A. That's a little bit more palatable. Mr. Holmes is a very capable person, he's a very industrious person, he has a, a real ability at knowing what's going on in the community. And so it's not unusual for him to walk in your office and talk to you about any number of things, not unusual for him to bump into you on the sidewalk on the way to the courthouse and talk to you about any number of things. So that's, that's a description of how he --

Q. In any event, you had discussed the matter of the phone call, at least what you knew about it, with the government sometime prior to February of 1985, correct?

A. I believe that's correct because it was in January I think when those discussions took place.

Q. All right. Bud Holmes shows up in your office on February 15th, Friday, February 15th, walks in and talks to you in your office, is that correct?

A. That's correct.

Q. He basically wants to know whether, what he's heard on the street or in some way ascertained is you have been talking to the government?

A. I think it was on the television.

Q. Okay. Television giving the information out, and the report is ostensibly you have been talking to the government prosecutors, correct?

A. That's correct.

Q. In the context of that questioning he asks again, or you volunteer, which is it, that the telephone call had been discussed between you and the prosecutors?

A. I did not volunteer. Mr. Holmes asked me.

Q. Okay. What did he ask you?

A. If the prosecutors knew about the telephone call and if I had been questioned about it.

Q. And you answered yes to both?

A. I said yes, the prosecutors have known about the telephone call for some considerable time now.

Q. Were you aware Bud Holmes had gone to the grand jury between the July appearance and the February conversation that you were then having?

A. He very well could have, I don't even -- I don't have --

Q. Am I correct, though, that at that time he led you to believe that based upon your testimony, based upon what you were telling the government, he was now, he Bud Holmes was now in jeopardy or being indicted for perjury?

A. I don't think that is an accurate description.

Q. Tell us what it is.

A. He -- I don't think he described it in those terms. I think that he told me that that was inconsistent with what he had told to the grand jury.

Q. Well, what he's saying if you tell the grand jury something that's inconsistent -- do you know what contstitutes perjury?

A. Surely do.

Q. Would that be a definition of it?

A. No, I didn't sit around and talk to Mr. Holmes about whether he committed perjury or he didn't.

Q. Mr. Ingram, Mr. Holmes has told us what he said is that, you just got me indicted for perjury. That's what Bud has told everybody in this courtroom. Do you recall him telling you that you just got him indicted for perjury? I'm not saying that critically, just trying to --

A. And I'm saying to you he didn't say to me, that I had gotten him indicted for perjury. That isn't the case at all. Now he was upset, he was upset that the prosecutors had already known about the telephone call and that when I was questioned about it that I acknowledged that yes I did know about the telephone call, and I so adviced them of that, so he was upset about it.

Q. But a step further. He also let you know that your information to the prosecutor about the phone call would have been inconsistent with what he had said under oath to those same prosecutors, correct?

A. I don't think he had to let me know that. I think I knew that.

Q. I didn't ask you whether or not he had to. My question, sir, did he at that meeting let you know that your testimony, what you had said to the prosecutors would be inconsistent with what he had testified under oath?

A. I would say that that would basically be fair, to say that.

Q. Mr. Ingram, is it fair to say when you -- that's the sum and substance of this conversation on February 15th, am I right?

A. Right.

Q. Fair to say, when he left, what you got the impression is that he was very much concerned about his, Bud Holmes, legal status at that time?

A. I think he was concerned that the government knew about the telephone call. I think he was concerned that they had questioned me about it and that I had said yes that I knew about the call.

Q. The point I'm trying to ask you about, just to try to focus in on it, what he appeared to be concerned about was his own well being, not anybody else's, that he was concerned that he might be in some legal jeopardy, correct?

A. I think that that's a fair statement.

Q. Did you get the feeling that he was concerned about anyone else's legal jeopardy at that point other than his own?

A. No, there was no discussion about anyone else.

Q. I'm concerned about your perception.

A. There was no discussion. I didn't have a reason to have a perception about it.

Q. That's fine. In any event, he returns to you three days later, right?

A. A few days later.

Q. At that time you knew you were going, it was February 15, you knew you were going to the grand jury on February 21?

A. I was going to the grand jury the following Friday, whatever date that was.

Q. 22nd? 21st I think was a Thursday. If I'm wrong, you were going at the end of the week?

A. The grand jury certification is incorrect on the date. I testified on a Friday in the grand jury, not on Thursday.

Q. Says 21st; it should be 22nd?

A. Yes.

Q. In any event, at the time when you're talking to him on the 15th and again early the following week, you knew and he knew you were going to the grand jury?

A. Absolutely.

Q. And at that time he comes back to you and put, to put it, I mean you're a lawyer, correct?

A. Yes.

Q. It's not, I take it some of this is painful to you, am I correct?

A. Certainly it is. It's not very comfortable.

Q. I understand that. Not just because you're a lawyer, but because it concerns people you have known all your life.

A. Certainly.

Q. He does, it's obvious he's left on you the 15th concerned about the jeopardy he's in, he comes back, whether it's Monday or Tuesday, early the following week and tries to in your terms, in your perception of it, suggest that you change your testimony on that issue?

A. Well, I'm not -- I don't think that I have said that he suggested that.

Q. I'm not interested in what you said before.

A. I'm simply saying to you, I don't think he suggested that I change my testimony. But he questioned me about whether or not I could be confused or that I misunderstood the telephone conversation, or his reporting about the telephone conversation, at which time I told him no, I was not mistaken about it.

Q. And that there is no reason to change what needs no changing?

A. That's correct.

Q. Well, you just told us he didn't try to get you to change?

A. Well, and — but you were saying to me that he suggested that I change.

Q. Why did you respond by saying, Bud, there is no reason to change that which does not need changing?

A. Because I had told him I was not mistaken about what he had told me.

Q. And I take it --

A. And I was not going to make an inconsistent statement with that which I had already made.

Q. Mr. Ingram, so we understand, okay?

A. Okay.

Q. The jury does best with just simple English. He was suggesting to you perhaps you were in error in your recollection, right?

A. That's correct.

Q. He put before you an alternate set of facts?

A. That's right.

Q. You rejected that alternate set facts?

A. I did.

Q. Because your version of the facts did not need changing?

A. That's correct.

Q. Okay?

A. All right.

Q. We've just talked English, right?

A. Well, I think I've been talking English all morning.

Q. That is basic English without talking in any fancy legalese.

A. I'm not trying to talk fancy legalese. I'm -- I don't want to say something that was not said to me.

Q. Have we just described --

A. Right, we have.

Q. Okay. So whatever the law calls that, it will call it, right?

A. Correct.

Q. Whether it be subborning or attempting to subborn perjury, rights?

A. Whatever the legal significance of it is, it is.

Q. Tell the jury what subbornation or perjury is?

A. Well --

Q. You want me to suggest what it is?

A. I'd rather have your suggestion than mine.

MR. FAWER:

Q. Asking or causing someone to lie under oath; is that a fair definition?

A. That would be a fair definition.

Q. Okay. Now the only thing we need not do is say whether what he did fits the definition because that would lead us into a further argument?

A. Because I have not said that.

Q. By the way, you are not a skilled criminal lawyer, are you?

A. Well, no I'm not a skilled criminal lawyer.

Q. What I mean by that, that's not part of your every day practice, criminal law?

A. Even though I do some criminal law practice from time to time, but I do not engage that as a specialty.

Q. Making money is more profitable than being a criminal lawyer?

A. I try to make a living practicing law.

Q. I'm kidding. As a practical matter, you did go before the grand jury and you talked about whatever you knew being about as honest about it and forthright as you could, right?

A. I did.

Q. Excuse me. Bud Holmes went before that grand jury the same day or the day before; am I correct?

A. I believe that's correct. Now --

Q. You do know -- well, you also know that he was indicted for perjury himself in that grand jury?

A. At some grand jury. Whether or not it was that or later than.

Q. Be a matter of record?

A. Whatever the records say.

Q. Let's go back in time a bit if we could back to the beginning of this because again I'd like to be able to tie down to the extent we can some dates so that we can use them as a course if it's possible.

A. Okay.

Q. First off, you'd known Wiley Fairchild for a long time before 1979, right?

A. Yes, I've known Mr. Fairchild for years.

Q. Is it fair to say he's an individual who's made a lot of money?

A. It's certainly fair to say that.

Q. And that when he goes into a deal no matter how small that deal is, he is going to as far as you know make a profit on that deal if it is at all possible?

A. I'd say absolutely, yes.

Q. Moreover, is it fair to say that he — how would you describe him in terms of his feeling that others are out to get him, out to take advantage of him?

A. Well, I think he has very definite feelings of that and has had for years.

Q. Is that part of his personality?

A. That's part of his personality.

Q. Has he on occasion do you find that on occasion and have you in fact been the subject before 79 been the subject of someone whom he turns on for reasons that he imagines?

A. Certainly. Yes, indeed.

Q. Had he in fact opposed your election in your second senatorial race, second or I think it was your second senate?

A. Yes, he did.

Q. He I take it in other words, he did not make any campaign contributions? In fact, he had supported the opposition?

A. I didn't have opposition the second time around.

Q. Okay. Had you learned that he was going to put up a candidate in opposition to you?

A. I had.

Q. That rift apparently whatever there was of it had been patched up by 79 or in the late 70's; is that right?

A. It had.

Q. How you indicated that you recalled the -- you described your background or your relationship with Judge Nixon, correct? I mean prior to 1979?

A. Yes.

Q. Fair to say it was a relationship both professional and social that you enjoyed?

A. Certainly.

Q. And that you enjoyed being in his company?

A. Why certainly.

Q. You felt that he enjoyed your company?

A. Otherwise, he wouldn't have been in my company I guess.

Q. Is there any reason to think otherwise?

A. No, there's not.

Q. Did you ever have the feeling that he was seeing you or talking to you to simply use you?

A. No, I did not.

Q. Were you seeing him or talking to him to use him?

A. Well, certainly not.

Q. Did you ever expect at any time to get any advantage out of your relationship with Judge Nixon in terms of your appearance or your firm's appearance before him?

A. I did not.

Q. Over the years has your firm since 79, before 79, have you lost numerous matters -- has your firm lost numerous matters before Judge Nixon?

A. I hope we're batting 50/50.

Q. You're working at it I guess, That speaks very well for a judge in a sense is it fair to say that you or how would you describe him in terms of his being a fair judge?

A. I think that he is an excellent judge. I think he's a most intellectual judge. I think he's a fine trial judge.

Q. In any event, coming back to this period of time, you indicated again and again at least you did on direct that you anchor -- you recall the first mention of Wiley Fairchild's name in the potential of his, Judge Nixon's, investing with him in 1979 because you were in the legislature that year, correct?

A. Yes. I anchor that and I have that sense that that occurs because I believe I was in the senate when those discussions took place.

Q. That's the point I wanted to make. What period of the year would you be in the senate?

A. Well, of course the senate's in session in the first part of the year. And even though I have some feeling that some of these discussions or one of the discussions may have occurred in Jackson, I'm not simply saying by that that I'm placing that while the senate is actually in session. I'm saying to you my sense was that I was a member of the senate during those initial discussions that I had.

Q. And you would have been in Jackson only -- you would have been in Jackson on senate business only during those first three or four months?

A. Well, yes, on a regular basis, but I was in Jackson almost once a week on interim senate committee work.

Q. I understand.

A. From time to time.

Q. In any event, is it fair to say at the same time Judge Nixon would sit and hold court in Jackson periodically?

A. Sure.

Q. And it was often when the two of you happened to be there together that it would be rather common to meet in Jackson?

A. I don't think it would be rather common. I would say that's occasional, yes.

Q. In any event, so we don't go over, again and again the same subject, as I understand it, he knew that you were an attorney or perhaps even kin to Wiley Fairchild, correct?

A. I don't know whether he knew I was kin to him or not but he knew that I represented Fairchild Companies.

Q. And as far as you knew, Fairchild's reputation is being a man of some augment in the oil and gas business was public knowledge?

A. Certainly.

Q. And clearly that's true in 79 am I right?

A. Right, yes.

Q. And he the judge mentions the idea of the oil and gas venture or I say the venture, the idea, asks you if you would consider speaking to Wiley about his investing with him and you agreed to do so?

A. Yes.

Q. And then you've indicated to us there was some reluctance on your part or put another way, I didn't do it immediately?

A. I did not do it immediately and there was some reluctance or my part.

Q. Did you at the time that Judge Nixon asked you this did you ever explain to Judge Nixon that -- let me withdraw that. In your judgment is Wiley Fairchild sort of at the very least a very unusual if not eccentric personality?

A. I would say so.

Q. Did you explain that to Judge Nixon?

A. No, I did not.

Q. You knew it though, correct?

A. I did, yes.

Q. When Judge Nixon asked you this and you didn't explain that fact about Wiley, did it concern you at all that you would be putting to Mr. Nixon -- excuse me to Mr. Fairchild a proposition which in some way could effect the stability of your relationship with Mr. Fairchild?

A. Well, I'm not sure that that was that much of a concern. I think that I knew that Mr. Fairchild's personality was at sometimes volatile. That's kind of a presumptiveness I guess you would say to have that request made of you and then for me to be presumptive enough to make that suggestion to Mr. Fairchild I think therein lies a significant amount of reluctance.

Q. That's really you just filled the bottle of why the reluctance. That's right. You just described it.

A. I described the reluctance earlier too that I was also aware not only of Mr. Fairchild's position, his personality, but I was also aware of where Judge Nixon was too. He's a federal judge. He's a federal officer and --

Q. At that time in terms of -- and I take it you thought it through just as you described it?

A. You bet I did.

Q. And as I understand it, you came to the conclusion over a period of time there was absolutely nothing improper in making such a request of Wiley Fairchild or you wouldn't have done it?

A. You have that exactly right. There was nothing improper about that.

Q. In any event, you sat on it for some period of time?

A. I did.

Q. And you then spoke to Mr. Fairchild?

A. I did.

Q. And apparently his response was almost very quick or put it this way without hesitation I'd be happy to do that?

A. His full response didn't make 20 seconds.

Q. The only thing was he'd have to look around and see what would be an appropriate investment or investments plural?

A. I took it that he was going to wait until an opportunity arose.

Q. There was no doubt in your mind, was there, that Judge Nixon was asking to make an investment with Wiley for the very reason that Wiley had a high success rate; am I correct?

A. Well, that would certainly be a reason that he would because Judge Nixon did not as I took it, was not an expert in that field.

Q. Put another way, he wasn't looking to go to somebody who had a history of drilling dry holes?

A. I wouldn't think he would, no.

Q. So we're very clear about it, he was hoping, he was asking to make an investment with someone who had a nice track record, right?

A. I'd certainly think that was a consideration.

Q. And in your judgment Wiley had such a track record?

A. Oh, he did, yes.

Q. In any event, you then reported as soon as you hear this when Wiley tells you this, I take it you immediately -- I don't mean you just ran out the door but within relatively short period of time you notified Judge Nixon that yes, you had spoken to Wiley and he would be happy to do it. He'd be back in touch?

A. That's correct.

Q. And by the way, as I understand it, between the time that Judge Nixon first asked you and your delay somewhat until you spoke to Wiley, as I understand it, he called you on a few occasions to say have you spoken to him yet?

A. He did, yes.

Q. Fair to say that that is not untypical of Judge Nixon in terms of his personality?

A. I'd say that Judge Nixon is persistent in what he wishes to accomplish and he can communicate that to you fairly well.

Q. And that's true regardless of whether it's in his personal, financial or professional life; is that true?

A. That's correct. If you're in his courtroom when he's here, you understand what he intends for to you do.

Q. As I say, that's not a criticism if I understand it?

A. No.

Q. That's the way the man is?

A. That's just fact.

Q. In any event, a period of time then goes by as I understand it and we're still in 19 -- as best you can -- I know you don't have any calendar. As best you can tell, we're still in late 79 waiting for Wiley to get back in touch with you?

A. Yes.

Q. That's your best sense?

A. That's correct.

Q. And he does get back in touch with you at some point and you put that I understand late you believe it's late 79. It may have been into early 1980?

A. That's correct.

Q. Have you thought long and hard about this?

A. I have.

Q. And you're comfortable that? You have taken all of the objective facts and basically that's the parameters that you put on the date; is that right?

A. As best I can do.

Q. When Wiley I think you said to me that Wiley called you with the relevant information; is that correct?

A. Mr. Fairchild called me at my office, identified the properties to me, told me what the value of the property was.

Q. You've just done that in sort of the third person in the sense that you told us what he did. But as a practical matter, he refers to you as Caroll?

A. Certainly he does.

Q. And he calls you not infrequently or at that time didn't call you infrequently on the phone, right?

A. It was not uncommon for me to have a telephone call from Mr. Fairchild during that time almost on a regular basis on a number of matters.

Q. And he mentioned that he had obviously I take it he mentions Judge Nixon's name because he tries to tell you what he's talking about?

A. Yes.

Q. And he tells you that he's got some investments or properties that he thinks would be appropriate?

A. He does.

Q. Does he tell you the names of the properties? Does he tell you well names, county names or what?

A. Tells me the property by description in the counties except as to Mobile and that's a city and he referred to that as Mobile.

Q. You didn't know that there's also a Mobile County?

A. That slipped my mind. That hadn't occurred to me. When he thought of Mobile, I thought of the city of Mobile and I don't even know whether or not even though I mailed the instrument for recording, I don't know what county I mailed it to. If it was Mobile County that's where it was.

Q. One was in Mobile. One was in Marion?

A. Marion County.

Q. And the third was in?

A. Covington County.

Q. And you were born in what county?

A. Covington County.

Q. In any event, he then told you and you made some note according to your recollection of those three counties?

A. I made a note on a little white -- as I recall a little white note pad much like I keep at my desk right now. If you go down to my desk right now there's a little white note pad by my telephone and I write it on my note pad.

Q. And did you write next to each of the counties the amount of acreage?

A. I did.

Q. Had you had anything to do with determining the amount of acres?

A. I did not.

Q. Did Mr. Fairchild tell you what it was?

A. He did.

Q. Was that, do you remember the numbers now or off hand or --

A. I think there were five acres in Covington County, there were three acres in Marion County and three in Mobile, if I'm not mistaken. The instruments would show what that is.

Q. I'm just asking, that's what you recall he told you back in late 79 or early 1980?

A. Yes, and I wrote the counties down -- he might have even given me his section numbers.

Q. Okay.

A. In those counties. And whatever that was, I wrote a sufficient description down to keep a note of it so I would know what it was.

Q. Okay. And at that time did he tell you how much the price was to Judge Nixon?

A. He did.

Q. What did he tell you?

A. Told me it was nine thousand five hundred dollars.

Q. Did he, I take it as I understand your testimony he didn't break it down, from his point of view that was the total for the package?

A. That's correct. He did talk to me about the relative, his opinion as to the relative worth of those particular properties.

Q. All right. I take it -- go ahead.

A. I can give you that, because in his conversation he thought the Covington County properties probably were not very good. He thought the Marion County property would be a good property. He thought the Mobile, he was high on the Mobile property.

Q. Did he tell you why or --

A. No, just a conversation that he had.

Q. That was your impression?

A. Beg pardon?

Q. That's what you said, and that was your impression?

A. Right.

Q. So do I understand correctly, at that time you did not sit down and say this much for this one, this much for the others?

A. That's correct.

Q. On this piece of paper would have been the three names of the counties, the numbers constituting the acreage in each and the single number ninety-five hundred?

A. That's correct.

Q. You don't have that piece of paper, but you held onto it for some period of time; where would you have kept it?

A. I would have kept it in my middle desk drawer.

Q. Okay. I take it that desk drawer today would have notes relating to a variety of subjects?

A. It probably would. And probably the note stayed on the little notepad for a long time until you, until you run out of tearing outs or notes on the bottom side of it, then you store it away.

Q. Okay. When you got this information from Wiley Fairchild did you ask him, was there any discussion about the preparation of the deeds or nothing said about it?

A. Yes, there was a discussion about the preparation of the deeds. When he identified the properties, it was my understanding he was going to see to the preparation of the deeds. I did not know whether he would do that in-house or whether or not he would have an oil and gas lawyer to do that.

Q. Let me ask you something, was there a discussion about his did you ask him that question? Did he volunteer the information he was going to take care of the deed? Was it sort of left unsaid?

A. No, I think I probably said well what about the instruments.

Q. Okay. What do you recall him saying?

A. I don't recall his saying anything. My belief is that when he identified the property, I probably asked him about the preparation of the instruments mainly to determine whether or not he wanted me to prepare the instruments or not.

Q. You knew that sooner or later instruments had to be prepared?

A. Sure, yes.

Q. In any event, the end of that conversation you called Judge Nixon, either right then or shortly thereafter, correct?

A. Yes.

Q. And what did you tell him?

A. I give him the names of the properties, the amounts of them and the total value of the deal.

Q. Okay. Is there -- was he pleased?

A. Certainly he was pleased.

Q. At that point, did you have any idea what the collective or individual value of any of those mineral leases is?

A. I do not, except for what Mr. Fairchild told me.

Q. Do you have any idea really what the five acres, three acres and three acres represent in terms of Judge Nixon's interest as a royalty owner?

A. No, I do not. I did not.

Q. Did you share with Judge Nixon any information whatsoever as to the value of that property?

A. None other than that the total amount is going to cost him that much.

Q. Is there any inquiry by Judge Nixon or you as to what do you know about the property?

A. He may have asked me if I knew anything about the properties, and my knowledge about the properties was zero. I did not know anything about the properties, didn't know, I knew what counties they were in and where they were, but I don't know anything about the properties.

Q. I take it you told him just that, you didn't know?

A. If he inquired about it I'm sure I told him. I didn't want him relying on me for the value of them.

Q. Okay. In any event, a period of time, a substantial period of time then goes by, correct?

A. Yes.

Q. And it's during -- by the way, during that period, you have occasion to see Judge Nixon in the normal course of events?

A. I surely do.

Q. You have normal, perhaps call him, him to call you?

A. Yes.

Q. Okay. On several of these occasions did Judge Nixon ask you what was going on?

A. He did.

Q. He knew deeds had to be prepared?

A. Asked me when the are deeds coming, when are the instruments coming.

Q. If any other person, if you were involved in a similar transaction, would you view that as an unusual question by one party to a transaction?

A. If you have an agreement to purchase a piece of property, then you want the instruments to consumate it, and you could have an inquiry about that.

Q. Let me ask you, though, something. Wiley Fairchild, is part of his personality, or from your perspective, Wiley does things in his own time, at his own pace?

A. In his own way.

Q. Okay. Did the delay really strike you as anything unusual, knowing Wiley Fairchild or it was just, you don't push him?

A. The only thing that was unusual about it was kind of irritating that the delay was there for me, because I was being asked about it and I couldn't give any reasonable explanation as to why the deeds weren't forthcoming.

Q. At the same time you knew that you had a personality you didn't really want to push, just wasn't that type of personality?

A. You're not going to push Mr. Fairchild.

Q. In any event, do you recall, you started to say something, you mentioned something about this on direct I think, that during one of these or more of these conversations when Judge Nixon was asking you about the way you were going to have the deeds, he mentioned the need for some advance notice so he could arrange financing, am I right?

A. Arrange financing or arrange to have his money available to make the purchase.

Q. As a result, or thereafter at some point you used that arrangement, I gather, or you mentioned that to Wiley Fairchild in asking him, when are you going to take care of these deeds?

A. That's correct, because I told him I needed to have the advance notice so I could tell Judge Nixon about it.

Q. You told Mr. Wiley, right?

A. Yes, I did.

Q. Was it at that time he said to tell Judge Nixon not to bother, he would carry the paper?

A. That's correct.

Q. Let me stop you a minute. When you say carry the paper, what does that mean?

A. That means that you would in essence loan him the money to make the purchase.

Q. When he said that, you had dealt with Wiley a long time?

A. Sure.

Q. Did you have any doubt in your mind when he said he would carry the paper that was going to be including what was the current reasonable interest rate which would be money going into Wiley's pocket?

A. It would be including a reasonable interest rate, something, some rate of return.

Q. Okay. Would Wiley demand that in terms of a kind of businessman he is?

A. He would certainly expect it.

Q. In any event, there then came a point in time after substantial lapse of time, apparently from what you're telling me, since the conversation, the deal was struck late 79 or at most early 80, about a year goes by before the actual papers come across?

A. I know several months went by. So long a time went by until I had doubts as to whether or not there would ever be a delivery of the instruments.

Q. Okay. So if I understand it correctly, we have from early 80 to early 81 when the documents, they just come across in an envelope on your desk?

A. Well, they didn't just come across. I'm sure I received a phone call from Mr. Fairchild saying that the deeds would --

Q. Were on their way?

A. Would be sent sometime.

Q. But if I understand correctly, were you present at any time in February of 81, prior to the preparation of either of these deeds, sets of deeds, when there was a discussion between Jarvis and Fairchild about leaving the grantee blank?

A. I was not.

Q. Skip Jarvis has testified that you were in such a meeting.

A. He is mistaken about that.

Q. Was there any discussion, so I take it you would not have been present when the original acreage number, when he Jarvis was told how many acres to put on that original deed?

A. I was not present when Mr. Fairchild gave Mr. Jarvis instructions about these deeds.

Q. You're positive about that?

A. As positive as I can be about it.

Q. Fine. We're, so as I understand it, Wiley now calls you, in effect tells you, you know, I'm still offering the deeds, right?

A. That's right.

Q. Let me stop you for a minute. At that point in time, had Drew Fairchild had been to your office in November of 80 as I understand?

A. That's correct.

Q. As far as you knew he had worked out some plea agreement with the federal government on some problem he had?

A. That's correct.

Q. At any time did it ever cross your mind that this transaction between Judge Nixon and Wiley Fairchild had anything whatsoever to do with Drew Fairchild's matter?

A. Absolutely not.

Q. As far as you know, did Wiley Fairchild ever think of the two in the same context at any point in time?

A. If he did, he never expressed it to me.

Q. Okay. If I understand correctly, did you know -- by the way, when you went to the grand jury, or at any time, did you ever really know when the drug bust was?

A. I did not know that until I was told of the drug bust by the prosecutors.

Q. In 1984?

A. Yes, that's correct. Because I had no independent sense of when the drug bust occurred with regard to Drew Fairchild. I had been asked, well certainly you would have seen that in the media, and well I would have seen it in the media, but as I have looked back over the situation it's my understanding that, when the drug bust as we're quoting now is August of 1980, it's my understanding Drew Fairchild was not arrested in that drug bust, and in fact he may have never been arrested, so that there wasn't a media play about his arrest or his being involved in that drug bust, so I had no way of fixing --

A. Fixing my knowledge of that to any point of reference.

Q. In fact, from your recollection now that you've had a chance to think of it, was there any publicity, so far as you know, prior to his being indicted by Bud Holmes in late August of 1981?

A. I think that that's correct. I'm not absolutely positive about it, I have haven't gone back and checked the logs at the various media, but I think that is correct. I don't recall there being any.

Q. Let me just ask you this, though. Do I understand correctly one thing you are certain about, regardless of when, the date, even though you weren't aware of what the date was of that drug bust, one thing you're certain of as you sit on the stand, that the discussion between, or the agreement reached, the oral agreement, verbal agreement reached between Wiley Fairchild and Judge Nixon occurred many months before August of 1980?

A. It certainly occurred before August of 1980 in my mind.

Q. In any event, had absolutely no -- absolutely nothing to do with it?

A. That's correct.

Q. And you have so told the prosecutors on any number of occasions?

A. Absolutely.

Q. You mentioned something, you described, I don't think there is a need to go back over it, how the deeds came over to you, they had a 1981 date on it, and also the acreage was wrong, correct?

A. That's correct.

Q. The acreage was in error?

A. That's correct.

Q. One I think, had one acre when it should have between three, three and five, correct?

A. That's correct.

Q. You called Wiley Fairchild up, told him about that error, correct?

A. I did.

Q. And discussed with him the need, in your view, the date should not be February 81 but it should reflect a day when the agreement -- approximating when this agreement was truly struck, and did you tell him what date that should be?

A. No, I did not.

Q. Did you both understand that it had been a period before?

A. As far as I knew we did, yes.

Q. Was there any discussion it should be done because the value then may have been either more or less than it is now in February of 81?

A. I don't think there needed to be a discussion between Mr. Fairchild and I of that. Mr. Fairchild is an expert in that field. He knows that probably better than you or I know it, and I certainly knew it, so it was simply a matter of bringing it to his attention and his basically saying I'll take care of it.

A. That's correct.

Q. When the deeds next come back they have a February 25, 1980 date on them?

A. They do.

Q. You saw that, right?

A. I saw it.

Q. You indicated on the stand you were comfortable with it. Did you mean as best you recall that was as fair an approximation of when the deal had been struck, the verbal deal as any date you could have come up with as well?

A. Well, that didn't offend my sense of an approximation of the date, that's correct. So I don't have a reason to question that, and I didn't.

Q. I don't know what you mean by offend your sense --

A. Well --

Q. If he had said you set the date, you know as well as I, as well as I do, would you have likely as not put February 25?

A. I might not put February 25 of 80. I would maybe have put the date several months previously to that time.

Q. You keep using several. I've heard you say that to me, I have a tendency to listen to words and try to take them a step further, make sure I know what you're talking about. You told us the deal was struck in late 79, maybe early 80?

A. Right, and I believe that to be the case.

Q. Fine. So what you would have done is either make it early 80, changed the year to 1979, correct?

A. I could have, or I could have put January of 1980, I could have put April of 1980.

Q. I understand that.

A. I could have done any one of those things, and that would not have been something that would have been inappropriate, something that should not have been done.

Q. Talking in the affirmative, the date put on it seemed appropriate to you under the circumstances?

A. It did, yes.

Q. Thank you. Okay. In any event it comes over, only thing left to be done from the lawyer's point of view is prepare the notes and you do that?

A. That's right.

Q. I heard you mention something that you assumed. You prepared the notes, that you assumed that had you not done that it would have been booked as, phrase you used, as a book entry note, book entry obligation, did I understand you correctly?

A. That's correct.

Q. If I understand what that would be, laymen or let's say Wiley Fairchild, if there was someone who owed him money, he would simply put him down, just reflect on the books of his company?

A. That's correct.

Q. That does not mean it was not an enforceable obligation, am I correct?

A. That's absolutely correct.

Q. He would go out there and collect it, even if he-s -- he just won't have a note?

A. That's correct. If the notes had not been prepared, if I had not prepared the notes and Mr. Fairchild had made a book entry of this debt or this obligation of Judge Nixon, then it would have been legally enforceable to collect. Had Judge

Nixon not paid it, he would have collected it.

Q. Let me stop there. When you say, is there any doubt in your mind, knowing the personality of Wiley Fairchild, businessman, knowing the way he is at that time and today, if these had come up, if the three wells had ended up as the Covington well or worse, didn't even return its money, do you have any doubt in your mind Wiley Fairchild would have collected every penny owed him by Judge Nixon?

A. He would have collected every penny that was owed to him plus the interest.

Q. From the date it was due?

A. From the day it was due.

Q. Are you aware of the fact he had made an error at one point in the collection of the interest and went back and asked Judge Nixon and collected that extra amount?

A. I wasn't aware of that. But that is not inconsistent with what I believe he would do, and which he's legally entitled to do. If Judge Nixon owes him money, then he's entitled to collect it.

Q. When you brought those notes down to Judge Nixon, I guess it was early March of 1981, is that correct?

A. Probably, yes.

Q. Was there any reluctance on his part to sign the notes? Was he surprised to see notes he would have to sign?

A. No, he was not surprised.

Q. Had you told Judge Nixon Wiley was willing to carry the paper.

A. I had told Judge Nixon he would be signing the notes.

Q. Sign the notes, brief discussion about the dating which you have described?

A. That's correct.

Q. Put the notes, took the notes, gave Judge Nixon a copy of the deeds I take it and left?

A. I think I gave him copies of the deeds and notes, but I'm not sure about that. It would be normal, that would be normally how I would do it.

Q. I take it it was he who requested you have these documents recorded?

A. That it was Judge Nixon who requested that I have them recorded?

Q. Yes.

A. I think that, I think that's not unfair to say that's probably right, because they were Judge Nixon's documents at that time, he could have kept them if he had wanted to.

Q. I understand. But recording protected his interest against the world?

A. It does.

Q. It did one other thing. Anybody who would look at the county records in Marion, Covington and Mobile, after the date of recording, would see that Wiley Fairchild and Walter Nixon had a transaction?

A. Certainly it would be a matter of public record at that point.

Q. Not only -- true people don't just line up to look at the conveyance records in courthouses, but they become, in fact some of the information is published on a weekly basis in newspapers?

A. It may be.

Q. In any event, you did record these in 1981, is that right?

A. I did. Except the Mobile County. There was some problem in recording the Mobile County. It kept coming back, I don't recall what the problem of it was but there was some problem with it, and it was recorded later.

Q. All right. So we understand it, it's not a problem which really concerns any issues in this case?

A. No. I mailed it down there, it came back. And we had to do something with respect to it.

Q. Was there some sort of minimum, some sort of tax or declaration?

A. I don't know, seemed to me you had to put the name of the, address of the grantee and grantor in it, something of that nature.

MR. FAWER:

Q. Just some bureaucratic problem?

A. Well --

Q. Okay.

A. You can get recorded.

Q. In any event, during the year 1981, the balance of the year 1981 were there continued your pattern -- I say pattern of some contact with Judge Nixon either speak to him on the phone or perhaps seeing him in Jackson, Hattiesburg or on the Coast if you were there?

A. Yes, I continued to see Judge Nixon from time to time until April of 1984.

Q. Okay. And I take it during that period of time did he make inquiry of you what you knew of the progress of the wells?

A. Yes, absolutely.

Q. And we jumped over it, but you described I think completely the meeting that you had arranged for me and Wiley Fairchild?

A. Yes.

Q. Let's focus on that for a minute. Do I understand that it took place obviously -- you described it took place in Wiley's office and that it was a 20 minute conversation just a pleasant chat or some sort; am I correct?

A. That's correct.

Q. As far as you knew you don't know that they hadn't met before, it seemed to you from Wiley's request to meet him that

that was the first time that they met?

A. It seemed that way, but it wasn't I want to meet Judge Nixon but I want to have a cup of coffee with Judge Nixon, okay.

Q. In any event, you knew nothing from either one of them to suggest that they had in fact met before but nothing concrete that said this is our first meeting?

A. That's correct. The truth about it is Mr. Fairchild is a public figure and in essence in the business and industrial world and Judge Nixon is a very prominent federal judge. It wouldn't be unusual for them to have met at any number of occasions before that. I wasn't trying to say that that was their first meeting, but it very well could have been. If it was, it was.

Q. There's nobody is concerned particularly about that, but what I would like to ask is there any way that you're able to state that whether that came after the verbal agreement but before the formalization of the documents or did that come after that? I mean is there any way of dating let's say between the beginning of 80 and the end of 81? I mean do you have any way of putting a date on it?

A. I cannot absolutely nail it down but I can give you what I believe occurred. I had first thought that that meeting took place after they had verbally agreed upon this transaction and that they meet soon after that. Once I got to looking at the documents that were finally furnished to me by the Government and we were looking at the specifics of the document, then it seemed to me to make more sense that that meeting occurred shortly after the delivery of those instruments and the reason that I felt that way was that there was a brief mention of the transaction, that they were pleased about the transaction during that meeting and that I don't recall there being any discussion about say when are these documents going to be brought to me. Do you understand?

Q. Yes.

A. So based on that, it seemed to me to be more reasonable that that meeting took place after the documents were furnished. Now that's the best explanation I can give for it.

Q. You've already described the meeting itself.

A. Sure.

Q. In any event, did Judge Nixon during 1981 make some inquiry after a period of time, you know, about the progress of the wells to you?

A. Yes, he did.

Q. Any question about are they in production, what's going on?

A. I think that Judge Nixon some way knew that finally there was some production on one or more of properties and that there was a call or calls and inquiries about the division orders.

Q. Let me see if we can refresh your recollection. You say you think you recall at some point learning either from him or for him that there had been some production on one or more?

A. Yes, yes.

Q. Yet there had not been any checks, of course, right?

A. Right. You don't get checks on production until division orders have been signed.

Q. The division orders are what? What is the relationship?

A. It's an instrument that sets out what your percentage or ownership is in a respective unit or production.

Q. And the division orders would normally is it something you wait until there's production to bother about getting division orders?

A. Most of the time it seems to me this is it and I'm not an expert but most of the time there's an oil well that's drilled or a gas well that's drilled and it's months and months and months before you start receiving a check because you got to have all kind of titles researched and run. Got to have drilling -- not drilling but title opinions rendered with respect to that and you've got to have division orders to come from from the various royalty owners and so that's the document we're talking about.

Q. Let me show you what's Defendant's Exhibit 33. It's three division orders. I just put them together. One is the one on Marion County, one is the one on Covington County and the third is the one on Mobile County. I don't know the degree to which you had any participation in preparing them but I think you had something to do with delivering them to Judge Nixon?

A. I think I delivered the division orders but I did not prepare them.

Q. By the way, it's been testified that at least as to the two from Marion and Covington the two Mississippi counts they were prepared in the offices of Wiley Fairchild by Skip Jarvis? You have no awareness of that?

A. I wouldn't know who prepared them.

Q. Did you know at all that Skip Jarvis was in an effort to determine whether Judge Nixon was seeing these division orders purposely used his wrong middle initial so that he would have the judge change the C. which he had written down to an L.? Did you know anything about that?

A. I did not know anything about that and I never knew that Skip Jarvis had any suspicion about Judge Nixon or this transaction until all this investigation took place.

Q. Did you have any reason -- were you suspicious about it at all?

A. Why certainly not.

Q. Do you have any reason to think that anything he -- any suspicion of Skip Jarvis's was founded in any fact at all?

A. None whatsoever.

Q. These get filed in early 82, correct?

A. Whenever.

Q. I mean dated January of 82 and I think it's a fair statement that they got filed?

A. Sure.

Q. You arranged by the way, the Judge -- the beneficiary signed the documents?

A. Sure, he does.

Q. Do I understand correctly what you see here in terms of the Nixon interest they're always three zeros before the first digit which would be a 5 in all of these wells which would mean, would it not, that his interest is five, ten thousandths or something?

A. Whatever they are, yes.

Q. Well, I mean the decimal point does indicated that it's five, thousandths, right?

A. Yes.

Q. During the year in the year 1982, I take it you were aware that there are -- well, let me ask you. Do you come to learn how -- I mean whether the wells are successful, whether there's money coming in on one or more of them?

A. I do come to know that.

Q. From whom?

A. From somebody. From Judge Nixon or from Mr. Fairchild or someone. I learned that there is some production.

Q. Do you get the sense from Judge Nixon that he's pleased with the investment?

A. I do.

Q. Do you discuss with him or with Wiley Fairchild whether or not he has paid off the notes or there are no discussions about that?

A. I don't believe there's a discussion with me about that.

Q. You've seen, of course, the notes are paid off by the paid stamp on them?

A. They're marked paid.

Q. But you didn't know anything about that?

A. No.

Q. You are aware I take it that during the period of 1981 late 81, 82 that your sense of it that there is some communication between Judge Nixon and Wiley Fairchild?

A. That's correct.

Q. And that sense of it is that they are either talking to one another or perhaps even Judge Nixon is dropping by and seeing him?

A. That's correct.

Q. You were never there on those occasions?

A. I was not.

Q. There would be no reason for you to be there?

A. No reason whatsoever.

Q. And would there be any reason why either man would find it necessary as far as you know to keep you abreast of that?

A. No, did not.

Q. Is it simply the sense of being with both men that that was what was going on?

A. That's correct.

Q. And it seemed like a pleasant, satisfying relationship between the two?

A. So far as I knew it was.

Q. In fact, the latter part of 1982, in September, Judge Nixon was elevated was he not I should not say elevated, he became the chief judge; is that right?

A. I'm not familiar with those dates, but he became the chief judge in whatever date he became that on. He did, yes.

Q. And you along with Wiley and maybe a hundred others lawyers and others were at a party at which celebrating his becoming?

A. There was a reception that was given in honor of Judge Nixon --

Q. Here in Hattiesburg?

A. Yes.

Q. Where?

A. It was at Bonnie & Clydes.

Q. And Wiley was there, you were there, Barbara his wife was there. I mean it was a festive kind of gathering in connection with some bar association?

A. Virtually every lawyer in Hattiesburg was there.

Q. And that was in the -- dating the end of October of 1982 okay?

A. October of 1982?

Q. Yeah. October 28th?

A. Okay.

MR. FAWER: Judge would this be appropriate time? I have some more.

THE COURT: How much more have you got?

MR. FAWER: I'd say half hour more. I'm dangerous when it comes to time.

THE COURT: Well recess until 2:00.

(Recess)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: February 3, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 10

DAVID A. SCOTT
COLLEEN O'CONNOR
SCOTT & O'CONNOR
COURT REPORTERS
Post Office Box 2202
Jackson, Mississippi 39225-2202

THE COURT: Proceed.

MR. FAWER: Thank you, Judge.

BY MR. FAWER:

Q. Mr. Ingram, just to go back for one moment, am I correct, the notes that you had prepared, the three notes that you prepared in your office, you know what I'm referring to?

A. Yes.

Q. That Judge Nixon signed. They were not in any way conditioned on the wells producing oil; those notes were due and payable regardless of whether there was one drop of oil that ever came through the pipe, right?

A. At the time that those notes were signed, Judge Nixon owed ninety-five hundred dollars plus the interest, and if he didn't pay it, it was owed and could be collected, and was expected to be collected.

Q. By the way, as I note from the note, three three year notes, due and payable February of 83, and that's the date that you had?

A. That's correct.

Q. Was that as a result of your discussions with Mr. Fairchild?

A. That's correct.

Q. That -- let me finish the question. But that's the date, the term of the notes was determined in discussion out between you and Wiley Fairchild?

A. That's correct.

Q. It was not something Judge Nixon played any part?

A. No.

Q. So there was no, do I understand correctly, until that due date, the full principle and the interest could have been paid on that last day, but of course it was, Judge Nixon was free to make payments in advance, but not really required to do so, correct?

A. That is correct.

Q. Let's go on to just another subject for a moment. If I, we talked about the oil and gas transaction for the most part and your role in that. As I understand it, you also told us about what you believe to have been some continuing contact between Wiley Fairchild and Judge Nixon during 1982 and even recall the party over at Bonnie and Clyde's in late October. I want to ask you something for a minute, while this is going on there is something called the Drew Fairchild matter, Drew Fairchild case, whatever you want to call it. Let's call it the Drew Fairchild matter, okay?

A. Okay.

Q. If I understand correctly, November 80 is the first time you had any awareness, cognizance, that's because Drew came into your office to get your opinion on whether the plea was a good deal?

A. That's correct. He came to my office with the permission of his attorney, Bill Porter.

Q. I understand. It wasn't a case of going around his attorney, he was getting a second opinion?

A. I think that's exactly right, he was.

Q. In fact you called and spoke to Bill Porter about that very subject? That subject, in your judgment it was a good deal?

A. Yes, I believe I did.

Q. That's the last you knew of it. As far as you were concerned your impression was that was the deal Drew had made, over and done with, correct?

A. I assumed when that deal was done with the federal narcotics people or the Justice Department, whoever did that agreement with --

Q. U. S. Attorney, George Phillips.

A. All right, U. S. Attorney's office. When that deal was done in November of 1980, I assumed that Drew Fairchild matter was over, closed.

Q. By the way, I don't think the name George Phillips even came up in the questions about Drew.

A. No one's questioned me about that.

Q. George Phillips is from Hattiesburg and also a friend of yours?

A. He certainly is.

Q. Is it fair to say throughout this period you had no awareness of his involvement with the Drew Fairchild matter?

A. Absolutely not.

Q. The fact he negotiated the plea was unknown to you?

A. If you're telling me George Phillips negotiated that plea, then that's the first knowledge I have George Phillips negotiated. My understanding it was the federal narcotics people, perhaps in conjunction with the U. S. Attorney's office some way.

Q. The Memorandum of Understanding is in evidence and George has already testified here, so there is no problem.

A. Fine.

Q. Obviously it doesn't stay in that state because at some point in August, late August of 1981, there is an indictment out of Forest County of Drew Fairchild. You were aware of that, learned of that?

A. I'm aware of that, because then the Drew Fairchild matter seemed to become a public matter.

Q. Okay. And you recall that that's the first time there was some publicity about it?

A. That's right.

Q. Okay. Again without going -- showing you the records, there came a time in January of 82 when Drew entered a plea, he actually plead guilty to the charge, and there was a plea agreement. Were you aware of that?

A. I was not aware of that except in terms of it being a public matter.

Q. Okay. You knew of the plea?

A. If that were a public matter then I would have been aware of it.

Q. It was a public matter in the sense that he was in open court and pled on January 12th of 82. What I'm asking, though, did you become aware of the fact that the plea was one that was virtually the same as he had entered, agreed to in the federal level, namely, no jail time, he pleads, he cooperates against the pilot and he gets a suspended sentence and probation?

A. As far as I knew that was that. I knew that in a public sense, not because somebody came and discussed that with me.

Q. I understand. What you're saying, it's not something, street talk, it's something that is sort of known in the legal community because you had some interest in the matter, is that a fair statement?

A. I'd say that's fair.

Q. Okay. Did you ever know that status to change throughout 82, throughout 83? The status that that was the deal that had been made?

A. No, I didn't know that it had changed.

Q. Okay. I take it the DA was Bud Holmes?

A. Yes.

Q. That's the county, DA of the county that had indicted him and made this plea agreement?

A. Correct.

Q. Okay. Now, from what I gather at some time, at some point Wiley Fairchild was meeting with you throughout this period on a frequent or infrequent basis, right?

A. That's correct.

Q. You get the sense from talking to him that he has been in touch with Judge Nixon, right?

A. Yes.

Q. You get the sense from Judge Nixon that the wells have been producing and that there is even some discussion between them about a second investment?

A. That's correct.

Q. And Wiley mentions on one occasion that, that the judge, that he had asked the judge to say something to Bud Holmes and that he had done so?

A. That's correct.

Q. Now, can you tell us, first of all, have I -- what did he say he asked the judge to do other than say something to Bud Holmes?

A. To talk to Bud Holmes about Drew Fairchild, Drew's case, about Drew's case.

Q. When you say about Drew's case, did he say that or did he say he just asked to talk to Bud about something that was on his mind?

A. It's my belief that he said that he was to talk to Bud Holmes about Drew's case. Now that's -- that's what I believe he said.

Q. You were asked about this in the grand jury, am I right?

A. I was asked about that in the grand jury, that's correct.

Q. Okay. And you say he, Wiley, whereas concerned about the case being up and down in the court, in and out of the press, newspaper and television and that sort of thing?

A. He did have that concern.

Q. That's what his concern was, and as I understand what you were saying, that's what he had asked the judge to talk to Bud about?

A. Well, now, that wasn't my understanding about what he asked to talk to Bud about. My belief was that he asked to talk to Bud about his case. Mr. Fairchild did not go into any detail with me about what was on his mind with Judge Nixon.

Q. Okay.

A. And I didn't inquire.

Q. First, let me ask you a question. That's my next question, he didn't tell you what he asked him nor what occurred, and you didn't ask him the question, right? When he mentioned it to you, you didn't further inquire of him about the subject?

A. He told me about it and that was it.

Q. Did it dawn on you, the man had already had an agreement, he was never going to go to jail, right?

A. And I assumed that to be the case the whole time.

Q. I understand. Did it dawn on you, what could he ask Bud

Holmes, what could he want from Bud Holmes if the deal was as sweet as could be at that point?

A. I don't think, I don't think that Wiley Fairchild thought that the deal was sweet as it could be at that point.

Q. I'm not concerned about what he thought. You knew it at that point?

A. I knew what?

Q. That he had a plea agreement with no jail time, am I right?

A. That's correct.

Q. Let's stop for a minute. Now a man who is not a lawyer makes this -- the comment to you, right?

A. Right.

Q. And at that point you know that the man, even though you're not an expert in doing criminal work every day, the man has the ultimate in a deal, no jail, right? You put your imprimatur on a deal back in 1980, right?

A. That's correct.

Q. Okay. Did it dawn on you, what could he have asked of Bud Holmes at that point in time? What was it that was concerning him, other than the publicity?

A. No, it did not dawn on me to inquire about it, and I didn't. I'm simply saying I think that was Mr. Fairchild's concern was the publicity that was involved in it, and how he didn't go in details about that with me.

Q. He has told us -- let me ask this question. I take it he didn't tell you as he has told us today, or this week, last week, that what he was complaining about was being blackmailed by Bud Holmes and possibly by you?

A. No, he did not.

Q. Were you aware -- I'm not suggesting for a minute, Mr. Ingram, you were involved,

A. Well, that's absolutely ridiculous.

Q. I'm saying you understand I'm not accusing you of that?

A. Okay.

Q. You are aware of the fact, before you were here today, you did know that that was something that Wiley Fairchild has thrown around, am I correct?

A. I don't know whether he's thrown it around or not, but it's absolutely ridiculous.

Q. I didn't ask you that question. I don't want to quarrel with you. Nobody is accusing you of it. I'm not. But you do know that is something that he has voiced both several years ago and has repeated it from the stand?

A. No, I have not heard his testimony.

Q. I understand that.

A. I haven't heard his testimony.

Q. You haven't read anything?

A. I read the newspapers, what the newspaper accounts are, I surely have.

Q. Okay. That's an accurate reflection of what you read?

A. I'm not quite so sure that he made that statement.

Q. You want me to read it to you?

A. No, I don't want to you read it to me. I'm saying if he did, it's ridiculous.

Q. I understand that. Don't take umbrage at me, I didn't give the testimony.

A. I take umbrage at the statement.

Q. I can understand why you would. You understand why I'm questioning -- you're not on trial here, right?

A. I certainly don't believe I am and have no reason to be.

Q. I have a reason to need to question you about it regardless of whether it is painful for you someone would make an unfounded accusation.

A. It is painful to me.

Q. But it does not obviate the need to talk about it.

A. All right, let's talk about it.

MR. [illegible]:

Q. It is an accusation that you have known that he had made in the past; am I correct?

A. Only from the standpoint of what has been told to me.

Q. I understand that. That's my point. When he mentioned this request he made of Judge Nixon, he didn't say anything to you that he was complaining about Holmes and you blackmailing him?

A. No, he did not.

Q. Fine.

A. Absolutely did not.

Q. That's all. He mentioned to you that he had asked something of Judge Nixon in terms of asked him to speak to Bud Holmes, correct?

A. Yes, he asked to --

Q. I beg your pardon. Go ahead.

A. Yes, he said that he asked Judge Nixon to speak to Bud Holmes.

Q. And that it was about the case?

A. And it was about Drew Fairchild's case.

Q. And that's as far as you went. You know nothing more than from Wiley Fairchild about it, correct?

A. I know that Wiley Fairchild told me that Judge Nixon confirmed that he had spoken to Bud Holmes about the case.

Q. Excuse me. Judge Nixon confirmed that to you yourself?

A. Certainly he did.

Q. We'll come to that.

A. Okay.

Q. Are you upset about my questioning you right now because I got the impression that you wanted to tell me that.

A. Am I upset about your questioning?

Q. Yes. Are you upset about my questioning you about this area?

A. I am upset about those questions, okay.

Q. I'm sorry.

A. And if you've got to question me about that, that's fine. I'm willing to answer them.

Q. I want you to be comfortable. You understand I have to do this okay?

A. Okay.

Q. Now Judge Nixon as well in the same some point in time mentioned to you that Wiley had asked you to speak to Bud, you confirmed that he did that, correct?

A. That's correct.

Q. Is it fair to say, Mr. Ingram, wasn't said any secretive way, he wasn't telling you about this furtively or any of that sort. He just told it to you in the course of a conversation?

A. That's right. He did.

Q. When Wiley told it to you, it was the same way, right?

A. Certainly.

Q. You indicated that Wiley had confirmed that Judge Nixon had in fact spoken if he requested, he had spoken to Bud Holmes?

A. That's right.

Q. That's basically the sum and substance of what you know about this matter before; is that correct? That's the sum and substance of what you know about it before Bud Holmes discusses it with you after your grand jury in July of 84?

A. That's exactly right.

Q. I haven't left anything out, have I?

A. I think that fairly states it, yes.

Q. From that point on until -- those were two passing remarks that you linked in the sense you realized by the way, Wiley and Judge Nixon's not talking to you statement. It wasn't one conversation?

A. No, it wasn't.

Q. So that what happened is that you saw Wiley, he mentions it. At some point in time you believe after that Judge Nixon mentions it?

A. That's right.

Q. And you realize that the two of them have sort of mentioned the same what appears to you to be the same event, same incident?

A. Yes, and I'm not so sure how firmly I connected the two.

Q. Okay. Is it fair to say it was virtually of no significance to you because they gave it no significance?

A. Well, you're putting words into my mouth about it being virtually of no significance to me. It was of some significance to me, but I didn't have a clear outline of what had occurred.

Q. You say it was of -- let me ask the question the other way. What significance?

A. Well, it was a significance in that it was a conversation that both of them referred to.

Q. Okay.

A. All right. And that was significant to me, but it wasn't something that I felt like that I had a command of the knowledge of the situation. It --

Q. No more command of it or no more reason to think about it than you did about the actual date of the verbal agreement back in early 1980, right?

A. I say that's fair, yes.

Q. And there's no reason why you have any fix on when that took place, do you? When they were -- not when they spoke to you, but when this conversation or this request by Wiley was made of Judge Nixon, you don't know when that happened?

A. It's my belief that it happened in the fall of 1982.

Q. I heard you say that before. I'd like you to tell us why?

A. Because that's my sense of the happening of those events that places a time on it. But no, I don't have a note that says that here I learned this today and this is an evident fact that I can tell you that, so I don't.

Q. Now what I need to know is that there's obviously we talk and we call things months and years. What is it in your mind that distinguishes let's say late -- let me finish. Late 82 from early 83?

A. Okay. Late 82 I know that that case was passed to the files in late 82.

Q. Right.

A. And it's my belief that that knowledge of the phone call from Wiley Fairchild came to me before the passing of that case to the files.

Q. What makes you say that?

A. Because of the event of the passing it to the files.

Q. It was passed to the file --

A. And based on my memory.

Q. I understand. That's what I'm dealing with now. It was passed to the file and 30 days later it came right out, right?

A. Sure.

Q. You knew that?

A. I knew it came out sometime later.

Q. It was 33 days later.

A. Okay.

Q. How do you associate that in point of time? Let me put it another way. I take it the first time you ever thought about this is really when Bud starts questioning you about it after

July 19?

A. That's exactly right.

Q. Never think about it until July after that?

A. You're saying never think about it and I'm saying to you that no, I didn't have to think about it.

Q. I understand. You started trying to come to some recollection of when it occurred when Bud mentions it to you in sometime after July 19?

A. That would be correct, yes.

Q. And at that time in all fairness there's an investigation going on, correct?

A. Sure, yes.

Q. Of an extensible of some wrongdoing in connection with the Drew Fairchild case, correct?

A. Yes.

Q. And here's Bud Holmes questioning you about your knowledge of that phone call?

A. Right.

Q. That point in time, of course, which is two years after it extensively occurred a year and a half, right?

A. Yes.

Q. But you do know two years later in 84 is that there was a passing to the file?

A. Right.

Q. Okay. And this phone call, correct?

A. Correct.

Q. And that there's now an investigation?

A. That's right.

Q. And when you tell yourself at that time you being in good faith, I'm not suggesting otherwise that you think this conversation or this phone call which you didn't you weren't present at. I shouldn't say this phone call. This message from Wiley to the Judge occurred before the passing to the file?

A. That was my sense of when it happened.

Q. But it is fair to say you have -- that as you sit there now it could as well happened within two months on either side of it three, four months on either side of it and there would be nothing that would really disturb you if it was established to have occurred three months later than that?

A. In the absence of my being able to say that I knew the phone call happened on this day, then I've told you I have no independent way of establishing when that phone call took place. I have given you what my belief is and what my sense of the feeling is.

Q. That's all I'm asking.

A. And so that's it.

Q. That's fine. Let me ask you. You've seen Judge Nixon in Hattiesburg at times when he was holding court here, correct?

A. Yes.

Q. You've seen Judge Nixon or have you seen Judge Nixon -- let me withdraw that and ask it another way. Hattiesburg is sort of the hub of Southern Mississippi in the sense if you're going to go from Jackson to the Coast from Meridian to the Coast, from Vicksburg to the Coast, you're going to pass through Hattiesburg, right? Every one of those?

A. Right.

Q. Those are where the five courthouses are that he sits in, right?

A. Right.

Q. Would you on occasion see the Judge? Would he be in Hattiesburg just passing through or that's not something that would normally happen?

A. I don't think it's normally but that's possible I could have and probably did, yes.

Q. Is it fair to say that you don't know and if you do this is not something that you know about just tell me, have you ever known of the Judge to run up here let's say and to run back at 5:00 to the Coast?

A. Not to my knowledge, but I wouldn't know when the Judge came everytime.

Q. All I'm asking you.

A. I don't have any knowledge of that having happened.

Q. You never recalled you're never aware of that ever happening as far as you know?

A. No.

Q. Have you ever been with the Judge as far as you can recall to Bud Holmes's office?

A. No, I have not.

Q. So the Judge -- your hand's in front of your mouth.

A. Excuse me.

Q. I beg your pardon. So it's understood at any time and you know that Bud Holmes had an office D. A. had his office down the street a few blocks, have you ever if you can recall gone there with the Judge?

A. No, I have not.

Q. Did Wiley Fairchild ever request or tell you to get the Judge to his office?

A. He certainly did not. The only request that I have ever had from Mr. Fairchild for the Judge to visit his office is the one I told you about this morning.

Q. Which as I understand it you can't specifically date it occurred in your best judgment sometime shortly after the formalization of the deeds in early 81?

A. That's correct.

Q. So when we move into 82 and 83, your testimony is there was no such occasion where he ever tells you I want to speak to the Judge, will you get him here?

A. Absolutely not.

Q. It's fair to say is it not as well that you never brought the Judge on any such subsequent occasion -- I say subsequent to that first time to Wiley Fairchild's office?

A. That's correct. I didn't bring the Judge to Mr. Fairchild's office. And there again, I don't have the privilege to bring the Judge anywhere. That's not within the purview or any relationship that I have.

Q. Well, to put it another way, had Wiley Fairchild made such a request of you, it would so stick out in your mind because it's so out of the ordinary if someone would say bring the Federal Judge to my office; am I correct?

A. You've got that right because you don't bring a Federal Judge anywhere.

Q. Depends if his wife asks?

A. Well, I don't. I don't bring him anywhere. I don't summons a Federal Judge anywhere or any other kind of Judge.

Q. But the bottom line is you never would ask to bring him by Wiley nor did you ever accompany him under such circumstances to Wiley's office?

A. I did not, no.

Q. And following that up, you were not as I understand it ever in Bud Holmes's office with the Judge?

A. I don't ever recall being at Mr. Holmes's office with Judge Nixon.

Q. There were times in connection with your practice I mean whatever criminal practice you had or whatever else it might have had to go with Bud Holmes, you would have been in Bud's offices on various occasions; isn't that true?

A. Isn't any question about that. I and other members of my firm frequent the district attorneys office regularly in this county and we have done that for years.

Q. You've told me that you didn't ever -- you never were at Bud's office with the Judge. Would you have any -- independent of the Judge, would you ever even be at Bud's office yo have a drink?

A. No.

Q. Do you drink?

A. Yes, I drink some wine, yeah.

Q. Aside from with dinner or something or that sort at a cocktail party?

A. Right.

Q. But would you ever -- have you ever been in Bud Holmes's office where you and the Judge and Bud Holmes are sitting down and having a drink?

A. No.

MR. FAWER: Bear with me a movement.

(Pause).

MR. FAWER:

Q. I wanted to ask you a question. You indicated that Judge Nixon on one occasion had mentioned that he had -- I don't want to go right over the same ground but the context was that on some occasion casually Judge Nixon mentioned that Wiley actually talked to Bud about and he had done it, fair statement?

A. Yes.

Q. That there was question of the grand jury as to what that -- can you tell us any more about that and as I understand it, that's all there was just the sense that a message had been asked to be communicated, the Judge had done that at the request of Wiley Fairchild period; am I right?

A. Well, that's basically correct and I think I have testified and you can read my grand jury testimony if you want to but I have testified in the grand jury that Mr. Fairchild asked Judge Nixon to talk to Bud Holmes about Drew's case and that Mr. Fairchild told me that Judge Nixon did and reported that back to him and that their conversation was positive. Now --

Q. That's what I wanted to stop you. Did anyone ever use the word positive?

A. No, I'm not saying someone said positive.

Q. You did in the grand jury?

A. Okay. But --

Q. I need to talk to you about it. I need to know what was said. That's a lawyer using a phrase that nobody in this conversation used.

A. Well, fine but it's the sense of what did occur. Maybe --

Q. I wonder what was said?

A. Well, I don't --

Q. If you can't remember that then I need to know that?

A. I don't know exactly what was said.

Q. I understand that.

A. And I have not testified that I knew exactly what was said.

Q. I understand --

A. But I have given you my best sense and my best judgment of what was said.

Q. You used the phrase in the grand jury in terms of the phrase positive. You used it.

A. Okay. And that was my assessment of --

Q. Let me finish. You told us the word wasn't used and I'm not trying to harrang you but I am trying to find out. You got a sense that the message was passed on to Bud, correct?

A. That's correct.

Q. And the person from whom you got this positive I mean what is the -- where does the positive spring from?

A. Well, in my talk with Wiley Fairchild, I got the sense that he felt like that Drew's case was going to be okay that he had got positive information --

Q. When he's telling you this, was this I mean it's going to be okay the case was on and off, you know, in the inactive status and back on the active status. Did it ever dawn on you to say hey, how does that square with all this?

A. No, it did not and I didn't make such an inquiry.

Q. In any event, by the way, is it fair to say that Wiley Fairchild is someone who's totally naive when it comes to criminal procedure, legal proceedings or that sort of concern?

A. I wouldn't say totally naive, no.

Q. Has he ever been involved in anything himself?

A. Well, not that I know of. Maybe I took your word naive to be something else.

Q. Does he know I mean does he have any knowledge of criminal law, criminal procedure?

A. I don't know what his knowledge is.

Q. Your sense of it.

A. Now, Mr. Wiley Fairchild is an intelligent, smart man.

Q. I understand that.

A. Maybe he doesn't have the kind of formal education that you may have or some other people has, but he is a smart man.

Q. Nobody's disputing that.

A. Okay.

Q. My question was --

A. I don't think he's naive.

Q. I didn't ask if he was naive about, you know, about life in general. I asked whether he is someone who's conversant with criminal procedure. I think that's a rather simple question.

A. I wouldn't think he is conversant with criminal procedure.

Q. He is somewhat naive when it comes to matters concerning criminal procedure?

A. Well, I would say that he would be somewhat uninformed or uneducated.

Q. Uneducated but not naive?

A. Yeah.

Q. Tell the jury what passing to the files mean if you know?

A. Well, passing to the files is a term that is publicly and commonly used here when you dismiss a case and put it in an inactive status.

Q. Your the first person who's ever said that that means dismissing a case. You seriously believe that dismisses the case?

A. Well, it dismisses it to an inactive docket.

Q. How does it get back on the active if you've dismissed it, how do you by motion get it back on 33 days later?

A. Because the procedure that the district attorneys office here and the court has used for a long time is that the matter is what we call passed to the files that it is dismissed and unless there is some reason to bring it back to the active docket, it's never brought back.

Q. Can I ask you a question? Is the word dismiss -- you use the word -- the first person I've ever heard to use it in this connection --

A. It's --

Q. Excuse me. Is that word either used in the motion or order passing it to the files?

A. I don't know. I haven't seen the order or the motion.

Q. In the order passing to the file, can you show me any document that ever suggesting to the file means anything about a dismissal? One piece of paper in the history of Mississippi jurisprudence?

A. I haven't even made a research of that and no one's asked me to make a research of that so I'm not -- I haven't ever seen it, no.

Q. All I asked you, sir, do you know when you use the phrase and I assumed you knew something about it and I still accept the fact that you may know something about it but I'm learning to you it means dismissing it?

A. It does and it means dismissing it to me in much the sense that we dismiss a civil suit without prejudice.

Q. In other words, be brought back?

A. It can be brought back.

Q. Were you surprised when you say it put back 30 days later?

A. Well, I was surprised because I assumed when it was passed to the file that it was gone forever.

Q. Did you talk to anyone about that?

A. No, I didn't talk to anybody about that.

Q. How about while he complained to you about it?

A. He did at some later time, yes.

Q. Not then?

A. Not right at the moment it was brought back.

Q. In the ends of 1983, apparently Bud Holmes was going out of office; is that correct?

A. Right.

Q. And at that point in time, as I understand it, you got a call from, was is Drew or Wiley?

A. Got a call from Mr. Wiley Fairchild.

Q. Indicating that Bud Holmes had called Drew, correct?

A. That's correct.

Q. Wanting to take care of the sentencing, sentencing disposed of before you left office, right?

A. That's correct.

Q. And this upset Mr. Fairchild?

A. Very much so.

Q. He didn't understand what was going on?

A. Didn't seem to. He was very disturbed about it being in and out of court, up and down on the calendar of the Court.

Q. And --

A. And he didn't use the word calendar.

Q. I understand.

A. But that's mine.

Q. In and out of newspapers, up and down?

A. Exactly right.

Q. In any event, you called Bud Holmes and told him that Wiley was some upset, right?

A. I called Bud Holmes or either Mr. Holmes called me, and I'm not sure which one of us did.

Q. I'm not sure, I don't think it makes any difference.

A. In talking to him, talking with Mr. Holmes, I relayed the information to him that Mr. Fairchild was unhappy.

Q. Okay. And in any event, he went out to see Mr. Fairchild the next morning?

A. In any event, at a later time I learned that he and Judge McKenzie had gone out at that time.

Q. Okay. He went out there, so you learned later from Wiley Fairchild, correct?

A. Beg pardon?

Q. You learned from Wiley that they had been out there?

A. Yes, I did, I learned it from Mr. Fairchild.

Q. It was simply to assure him that, he just wanted to make sure that the commitment was lived up to or having a probationary sentence. He was ready to go ahead with the sentencing then and there if that's what they wanted?

A. Mr. Fairchild didn't go in that kind of detail with me. He said they had been out, pleased with the meeting.

Q. Did he tell you why?

A. Thought everybody was going to be okay, that's all.

Q. First, let me just understand. Judge Nixon has nothing to do with that whole incident?

A. So far as I know had absolutely nothing to do with it.

Q. So far as you know, and Bud explained to you, Bill Porter had died by then, right?

A. That's correct.

Q. Whatever arrangement, whatever plea agreement he had made --

let me ask you a question. In Mississippi, basically plea agreements are not reduced to writing; handshakes, gentlemen's agreements?

A. I was just trying to think, Mr. Fawer. I don't believe, even though I have not handled criminal cases extensively, I have handled some, our office has handled some, I don't believe in the state court we have ever had one reduced to writing. I'm assuming that is presently our practice in the state.

Q. There the person with whom the handshake has been made is now dead, Bill Porter. Bud is in effect saying, look, I'm leaving office, if you want me to live up to the commitment before I leave, I'm willing to do it. Judge is sitting here, I'm saying it publicly in front of him, am I correct?

A. I didn't dispute that. I'm assuming that is correct.

Q. By the way, Bud did tell you that's what he was trying to tell Drew, that started this whole little incident in December of 83, Drew didn't have an attorney, Drew, come on in and be sentenced before I leave office, correct?

A. That very well could be correct. I'm not sure that I'm -- that I know that much detail about that.

Q. Okay. In any event, that is basically, aside from I think your firm or somebody in the firm maybe making just a pro forma appearance at some other time, the sentencing came on, that's the end of your involvement with it before this investigation starts, right?

A. That's correct. I don't think my firm has ever made any appearnace for Drew Fairchild.

Q. I don't think your firm did, I think, isn't there a boy or attorney named Gladden who appeared one time?

A. I think that was a mistake in the appearances on the docket up there. Some other lawyer made an appearance for Drew Fairchild. To my knowledge, my law firm, no member of my law firm, and myself has never, we have never represented Drew Fairchild, or made an appearance for him.

Q. It's fair to say, I'm not inaccurate, I would have seen the name Gladden, you're simply saying that's an error, somebody else was there?

A. That's correct.

Q. I understand. In any event, you've now, we come now into 84, you have described, so we don't go over it again, you have described the conversation in which Judge Nixon, you learn of the investigation by Judge Nixon telling you in an excited way of accusations or inquiries that are being made of him by some people from the department and he is incensed, fair statement?

A. Sure.

Q. He's trying to find out if you know what the heck this is all about, fair statement?

A. Yes, right.

Q. And your next connection with this, did you not hear from Bud Holmes or anything about any telephone call before you go to your own intervies, I think you're interviewed on May 10th, from there you go to the grand jury in July, right?

A. That's correct.

Q. Okay. When you go, you are questioned at the grand jury for some length, when I say at some length, an hour or so you were in the grand jury, right?

A. A long time.

Q. Long time?

A. A lot longer than I wanted to be.

Q. Enough to get somebody -- 90 pages worth?

A. Yeah.

Q. Okay. And very candidly one of the things -- you were not, is it fair to say that when you had gone to the grand jury, you were unaware that there were really two sets of instruments, one dated in 80, or 81 and the other dated in 80, am I correct?

A. I was totally unaware.

Q. What you thought had happened was the one set had been corrected?

A. That's correct.

Q. You didn't know anything about tow sets?

A. That's correct.

Q. Unbeknownst to you, you were being led along by the interrogator, by the prosecutors who knew there were two?

A. They obviously knew there were two.

Q. Knew it the night before when they were questioning --

A. They knew it long before that.

Q. Knew it when you were in the grand jury?

A. Certainly did.

Q. Basically took you down a primrose path, in effect taking advantage of the fact you didn't recall, didn't know that there were two sets?

A. That's right. I had no concept in my mind that there were two sets of documents.

Q. Putting that aside, is it fair to say the thrust of that grand jury, the 90 pages, was an inquiry, the thrust, the sense of the grand jury, not every question, but basically was trying to determine whether there was some connection between the oil and gas deal and anything done in the Drew Fairchild case, am I correct?

A. That's correct, yes.

Q. And that's what these 90 pages, not every question, but the guts of it is all about?

A. I would say that that was the thrust of what the questioning was about, but no, Mr. Fawer, there are 90 pages of it and there was any number of questions, and any number of areas that I answered questions to and you have all that have.

Q. You have it, you've seen it. I have too.

A. Right.

Q. All right. The thrust of it is as I have described it, no question about it?

A. I think that that's correct.

Q. In the course of that grand jury, you were trying to answer those questions the best you could?

A. By the way, I really did not know the thrust of that, or what was taking place in the questioning. You know, no one sat down and said here's the thrust of our examination.

Q. What you're saying, the conclusion of what the thrust was comes, it begins at some point while you're being questioned; by the time you're finished, when you walk out of there, someone said what was that all about? You would say they were trying to figure out if there was a connection between the oil and gas deal and Drew Fairchild?

A. That's correct.

Q. You have consistently then and right until day insisted there is no such connection?

A. There is no connection.

Q. However, during the course of the grand jury, again, you're in there without counsel, correct?

A. That's correct. But now I do have counsel.

Q. You had counsel outside. You're in there alone, no one representing you?

A. Yes.

Q. Question is asked of you, did you ever discuss the narcotics matter with Judge Nixon?

A. I answered no.

Q. You answered no, correct?

A. That's correct.

Q. In fact, Judge Nixon had volunteered to you that on one occasion he had in fact, at Wiley Fairchild's request, spoke about Drew Fairchild to Bud Holmes?

A. He certainly had, absolutely.

Q. You still answered that no?

A. Right. And I answered that truthfully no.

Q. You did not ever view that as a discussion of that matter?

A. I didn't have a discussion at that point of that matter.

Q. That's what I'm saying. Your answer was no I did not. You believe it true then, and you believe it true now.

A. Sure. I want to go a step further. I have never had a discussion with Judge Nixon about the Drew Fairchild matter.

Q. I understand that.

A. Until this day.

Q. I understand that. But nevertheless, you did have a discussion, excuse me. You did talk to him?

A. He talked to me.

Q. He talked to you, very openly mentioned to you that Wiley had asked him to say something to Bud and he had done it?

A. That's exactly right.

Q. There is no question in your mind that related in some way to Drew Fairchild?

A. Sure.

Q. Nevertheless, it was clear to you and as you sit on that stand you were not misrepresenting any fact on Page 62 when you were asked that question, and your answer there is a totally honest one?

A. It certainly is.

Q. Also fair nobody has ever, nobody ever indicted you for perjury for that answer?

A. No, they haven't. No one ever suggested to me that was not a correct answer, until this very day.

Q. And you understand that I'm not accusing you of that?

A. I understand.

Q. As I understand it, and just try to move this to its conclusion, from that point on until January of 1985, from July of 84 until January 85, is it fair to say you had an attorney by the name of Joel Blass?

A. That's correct.

Q. And you were at least, let's see if the word anxious is acceptable to you. Somewhat concerned, somewhat anxious about your legal status vis a vis this inquiry that the prosecution, that the department was making?

A. I think any time that any person is called before a grand jury of any kind, you ought to have counsel, and he ought to be concerned about it.

Q. You were concerned and you were worried as to whether or not, at least by the winter of 84, whether or not you were in fact a target of that investigation? You couldn't understand why you should be?

A. It had been represented to me many times that I was not a target of that investigation, that I had no problem with respect to anything that I had done.

Q. Except --

A. And that was not a problem.

Q. Except there was some things going on that made that seriously questioned in your mind, correct?

A. In January of 1985?

Q. In December of 1985 your secretary gets subpoenaed to the grand jury?

A. Was it December? I thought it was early January.

Q. It was December.

A. Okay, December.

Q. Makes no difference.

A. I thought it was right at the first of January.

Q. Point being you were concerned about your, how you were viewed by the department, correct?

A. Well, when I had some staff members subpoenaed to the grand jury, then, yes, I was, I had some questions about what was happening, what was going on.

MR. PAWER: Excuse me one second.

BY MR. PAWER:

Q. I'm told I made a mistake. I didn't mean December 85, I meant December 84. That's the period we're talking about. You understood me to mean December 84?

A. Yes, I understood you.

Q. In any event, efforts were made to try to figure out, to try to impress or convince the department or your, that there was nothing improper that you had done. You knew that you had done nothing improper and in an effort through your attorney were trying to convince them of the same things?

A. Certainly we had discussions.

Q. You traveled to Washington, how many times in that regard?

A. Two times.

Q. How many time did your attorney go, twice?

A. Twice.

Q. Any number of phone calls between your attorney and the prosecutors, correct?

A. Absolutely.

Q. At some point in January the prosecutors became aware that you knew indirectly, third hand, about this request by Mr. Wiley or Judge Nixon, correct?

A. That's correct.

Q. They had no awareness that you knew about it before then?

A. I think that's right.

Q. Okay. At that point you are for the first time given a letter which classifies your status, right?

A. It does.

Q. What it in effect says, I guess would, you know what it says as well as I do, it says the department now views you as a fact witness, quote unquote, not as a target of the investigation?

A. Well, it didn't put it in those -- in the terms of not being anything, it just simply said that I was to be a fact witness in the case.

Q. That was, so we understand, you are to get that letter, I won't say in exchange for testifying, I don't mean it that way.

A. It did not come in that way, I want the record to be clear it didn't.

Q. No problem. It's fair to say, Joel Blass, an experienced attorney, your attorney on the coast, right?

A. You bet.

Q. Made it clear that was something he wanted?

A. Right.

Q. Before you went into the grand jury?

A. That's correct.

Q. And so we understand and the jury understands, not because he believed or you believed that you had any criminal exposure, but that's what, you wanted a clarification of your status?

A. That's exactly right. And wanted that clarification in writing.

Q. And that's what you got?

A. Right.

Q. But had never gotten that before that, they would never say that to you before that moment?

A. I had never asked for it. I never asked for it.

Q. You wanted to know, you continually had sought clarification. You didn't make these trips up to Washington just because you simply liked the climate up there.

A. I understand that. I'm saying to you, I had not requested that before.

Q. I understand. This was the first time that you were able -- you no longer, at that point, once that was understood, you were no longer viewed with any suspicion, there was no question about your status any more, correct?

A. As far as I was concerned there wasn't.

Q. You go to the grand jury, you're told you're going to go to the grand jury in February?

A. Correct.

Q. And it is in advance of that that Bud Holmes comes to you and you have the discussion concerning his exposure by virtue of what you had told the government, correct?

A. I don't know that I would state it exactly like you stated it, but that's exactly correct.

Q. Okay. And you basically tell them yes, you talk about that phone call, they frankly, they the government apparently knew about it?

A. The prosecutors already knew about that phone call, had known about it for some long period of time before that.

Q. Why was that?

A. Because I was advised.

Q. Didn't you know they had learned about it in November?

A. I'm saying that is the period of time. In fact, I think that's what they said, knew about it in November.

Q. Clear they don't know about it when you were in the grand jury the first time?

A. No. I'm accepting the November dates, that's fine.

Q. In any event, what you told Bud is, they have known about it, you have told them what you know about it?

A. They have asked me, they asked me specifically about it, and I responded that I did know about it.

Q. So the jury understands, they didn't just happen to ask you, it came to you and Joel Blass's awareness that they had a particular interest in that incident, and you through your attorney let them know that you knew something about it?

A. That's correct.

Q. Okay. And that's what led ultimately to the quote clarification of your status and the fact witness letter?

A. Well, I think that and other things led to it too, because we discussed the facts, there were some resolution of things that seemed --

Q. At that point, let's say your comfort level was a lot better than it had been the day before?

A. You're not kidding.

Q. Okay. So there you are now sitting with -- your heart beat is much lowered, and Bud comes in to you and has this conversation, and you basically tell him, look, they know about it, I've told them what I know, and that's what I intend to tell the grand jury, correct?

A. Absolutely.

Q. And he points out, again, we won't through the verbiage or the language, basically he points out that's inconsistnet with what he told them already and leaves?

A. Says that's bad.

Q. He comes back three days later after having thought about it and suggests that perhaps your memory is incorrect and you should change, might want to consider changing what your recollection is?

A. He asked me if it were not possible that my recollection were different.

Q. Okay. And it's clear to you when he did that, from your impression, your sense of it, he was acting out of his own self motivation concerning his own potential exposure to criminal prosecution.

A. I think he was certainly concerned about the situation and that that was why he was asking me about it.

Q. For himself.

A. He didn't sit down and talk to me about what his exposure was, and I, it wasn't. I wasn't in a position to sit there and to determine what his exposure was.

Q. Carroll, you're missing the thrust of my question.

A. Okay.

Q. The thrust of it is he was talking about his own exposure versus anybody else in the world?

A. He did not talk about or refer to anybody else's exposure.

Q. The neck that he was referring to that was on the line, figurative, was the neck that is on Bud Holmes, right? That's what he was discussing?

A. We didn't discuss it in those terms, Mr. Fawer.

Q. Those are my terms.

A. You may have discussed it with him. When I discussed it with him, you know, I've testified to what our discussion was, and I don't want to go accepting your description about what that discussion was. I want to say my own description.

Q. You can say so long as it's said.

A. Okay.

Q. Tell the jury the name of the person who Bud was describing was having a problem by virtue of your proposed testimony to the grand jury, that's all I ask.

A. Well --

Q. That's all I ask, the name of that person.

A. There is no question but what we were talking about Mr. Holmes' position, and Mr. Holmes' discussion of that. But now, I didn't have any discussion with regard to his peril, if he had any peril, okay.

Q. You had no discussion with regard to his peril?

A. That's right. I had no discussion with regard to his peril.

Q. When he talked to you and told you your testimony was inconsistent?

A. Okay.

Q. Contradicted what he had said before the grand jury?

A. And that's --

Q. Excuse me, sir. As a lawyer, you're going to tell this jury you weren't talking about his peril?

A. I'm talking about his inconsistent statement. We didn't talk about it in terms of peril. Or jeopardy, as you refer to it.

Q. I don't care what word. I'm a lawyer, I don't like to talk legalese.

A. I'm a lawyer, too. I don't like to talk legalese, but you're putting an emphasis on something that was not there.

Q. Let me put it to you another way.

A. Okay.

Q. He wasn't talking to you to try to get you to save Walter Nixon, he was trying to get you to deal with the problem that he, Bud Holmes had, right?

A. He wasn't asking me to deal with anything. Now, if you want to go back over the discussion, we'll go back over it. I'm not trying to argue with you about it. I'm just trying to say to you I've given a fair representation of that discussion and can give it in some detail, and I will not allow you to draw your incorrect --

Q. We'll let the jury.

A. And let the jury.

Q. Then we'll do that so we don't have any problem. Why don't you just, he comes into your office three days after he has told you that he, that your proposed testimony is inconsistent with what he said?

A. That's correct.

Q. That's the background Okay, he comes in, just once, three days later he comes back. You told him in concrete terms what your understanding is?

A. That' right.

Q. He comes back in three days later, without me asking, tell the jury what he says?

A. He says to me in that conversation, isn't it possible that you have misunderstood about that telephone call? Isn't it possible that maybe that's what someone else said that I said, and I said no, sir, that is not the case. And I further stated that I have already made a statement with respect to that telephone call and that's what my testimony is going to be.

Q. I thought I recall you telling me before there's another phrase that you use. That you saw no need to change that which was not -- I didn't see any need to change it and was not going to change it. Did you say that?

A. I may have said that.

Q. Tell the jury what is it that you said to him?

A. I just got through saying it.

Q. Please repeat it because I was interrupting inadvertently.

A. Okay. Do you want to get my grand jury testimony?

Q. I want to hear what your recollection is.

A. Just read it. You can read it and that will solve it.

Q. Did I accurately state it? I have no problem with it. Did you in effect tell him that you saw no need to change a story or a testimony that was not in need of changing?

A. I told him that I didn't see a need to change my statement.

Q. Fine, thank you.

MR. FAWER: Would you indulge me one moment, Your Honor?

(Pause.)

MR. FAWER: The only thing I'd like to offer the division orders that's Defendant's Exhibit 33.

MR. WEINGARTEN: No objection.

THE COURT: Very well, may be received.

MR. FAWER: I tender the witness.

BY MR. WEINGARTEN: Just a few questions, Your Honor.

RE-DIRECT EXAMINATION

Q. Mr. Ingram, let me show you an exhibit that's been marked. It's the calendar. Government Exhibit 20. Let me show you a calendar. It's already in evidence. Ask you to take a look at May 13th and see if your name is listed at any point?

A. It is. It's listed on May the 13th at 4:00.

Q. Do you have any recollection of being in the district attorneys office at that time?

A. I do not have any recollection of being in there, but I very well could have been in there.

Q. May I have that back, please?

A. Sure.

Q. Did you see Judge Nixon's name as listed when?

A. It's listed under my name at some time after that.

Q. Does that help you recall any occasion when you may have been in the building together?

A. No, it does not because my recollection is that I have not been in Mr. Holmes's office with Judge Nixon.

Q. Have you ever seen him in the building itself?

A. I don't think I have. I don't recall having seen him.

Q. What finally provoked Wiley to action in February or March of 1981; do you know?

A. Are you talking about with respect to delivering the instruments?

Q. Yes.

A. I would say because that I probably called him at some point before that time and asked him when the instruments were going to be delivered.

Q. You had done that before; had you not?

A. Why certainly I had.

Q. What specifically triggered him into action this time?

A. I don't know if anything specifically triggered him.

Q. Did Judge Nixon ever tell you that Wiley had told him that he actually charged him too much for these wells or these interests?

A. Did Judge Nixon tell me? Repeat that again.

Q. Did Judge Nixon ever express or told you that Wiley had told him that he actually ever charged him for these interests?

MR. PAWER: Excuse me, Your Honor. Is this redirect or is this -- I don't know any subject that this relates to and I would submit it's improper redirect. There's never been any inquiry about any such conversation. I know of no grand jury testimony that alludes to it in any way. If we're going to -- may we approach the bench?

MR. WEINGARTEN: I'm a questioning him about Judge Nixon's perception of the value.

MR. PAWER: Could be a profer. Could we have a profer of this?

(At the bench).

MR. WEINGARTEN: My understanding is that Judge Nixon advised Caroll that Wiley had told him that he actually overcharged him for these interests.

MR. FAWER: I have seen nothing. I have interrogated him on any number of occasions. I've read every bit of his testimony. I've never seen that suggestion nor have I ever seen you question him on that subject.

MR. WEINGARTEN: I don't remember specifically.

MR. FAWER: What's his response?

MR. WEINGARTEN: I thought he said yes, I have it written in my notes.

THE COURT: Overruled.

MR. FAWER: Your Honor, may I be heard on that? It was not inquired in direct. Why is it proper now on redirect when there was no reason why it be left off on direct?

MR. WEINGARTEN: I think it's in Judge Nixon's statement.

MR. FAWER: I understand that you didn't bring it out in direct. I didn't have a chance to deal in redirect. What's the propriety of him introduced the statement on redirect?

MR. WEINGARTEN: Judge Nixon's perception of the value.

MR. FAWER: You still have the same real or direct.

THE COURT: Overruled. If you want to go back over it.

(Open court).

MR. WEINGARTEN:

Q. Do you want me to repeat the question?

A. Please do.

Q. Did Judge Nixon ever tell you that Wiley Fairchild had told him that he had been overcharged in this deal?

A. I'm not sure that that's the context of that conversation, and I'm not sure whether or not Judge Nixon told me or whether or not Mr. Fairchild told me that Mr. Fairchild made a substantial profit off of the sale of those minerals from Mr. Fairchild to Judge Nixon. In other words, Judge Nixon paid substantially more for those minerals than did Mr. Fairchild at that time. But now about being overcharged, I don't think that that's the -- I don't think that that is the context of a conversation that I would remember.

Q. The property you're talking about compares the purchase price of Judge Nixon with what Wiley Fairchild paid for the property when he bought it?

A. That's correct. And I don't know what Mr. Fairchild paid for the properties when he bought them, but it's my understanding that he paid substantially less than what he sold them to Judge Nixon for. And now whether or not that was an overcharge, I don't know that. In fact, Mr. Fairchild is the only one who knows the value of those minerals at any time during any of this transaction and if the value of those minerals were not correct, at any time, all Mr. Fairchild had to do was to say to me that they were not correct. If he was attempting to convey something to Judge Nixon for which Judge Nixon did not pay, then all he had to do was to say that.

Q. Let me ask you this.

A. And it would not have been done.

Q. If in fact the value of those mineral interests was greater, much greater than $9500 at the time that were conveyed, would your view of the transaction be the same?

A. If I had known that they were much greater than the actual value, then the transaction wouldn't have been made.

Q. If you'd have known?

A. As far as I could keep it from happening because I am not going to let anyone convey something to a federal judge or a state judge for less than value or to any of public official.

Q. So if mineral interests were passed to Judge Nixon that were worth a great deal more than $9500 and you had known about it, you would have done something?

A. I would have certainly tried to do something. I will assure you of that.

Q. If in fact that's what happened, your view of the transaction would be greatly different than it is now?

A. My view of the transaction is from the perspective from where I was and for what I knew at that time and I have stated that view.

Q. A person who has no idea as to the value of those interests?

A. You got that right.

Q. Mr. Fawer asked you some questions about your first grand jury appearance. In your first grand jury appearance there was discussions about the backdating?

A. Yes.

Q. And at that time you testified that there was no backdating?

A. I testified that I couldn't recall that there was any backdating because we had -- you've talked about the set of instruments in terms of two separate sets of documents.

Q. Well, the notes and the deeds were backdated a year; were they not?

A. They were.

Q. And when you testified in the grand jury the first time, you didn't recall that happening?

A. I did not recall that happening but then when you presented to me the second set of documents and we went over that second set of documents, then I was reaffirmed in my memory of what did happen and you and I had several discussions about that and totally and completely resolved that one hundred percent. And if you're not satisfied with that --

Q. Mr. Ingram --

A. -- now then I want to get satisfied.

MR. FAWER: Excuse me.

THE WITNESS:

A. I want to get satisfied about it. And I'm not being hostile about it. I want to have a sense of what is actually occurring.

Q. The point is, the backdating was part of the clarification that went on in Washington?

A. That's correct.

Q. And you went back into the grand jury and you explained the transaction on your second appearance?

A. That's correct.

Q. Did you barter information about the telephone call in any of those appearances in Washington to benefit yourself?

A. I didn't ever barter any information any time to benefit myself. From the very beginning since the first time I was called about this transaction, I told the Department of Justice that if I had any information whatsoever that would help bring to light the truth in this matter that I was willing to help bring it to light. And that's been my posture for two years and is my posture here today.

Q. Then let's get right to the point with the phone call.

A. Okay.

MR. FAWER: Is that a question?

MR. WEINGARTEN: Mr. Fawer, if everytime you made a statement to this jury --

MR. FAWER: Your Honor may I have a ruling? Is that a question.

MR. WEINGARTEN: -- I challenged you on it, I would not be sitting down.

MR. FAWER: You have a perfect right, sir. It's not my fault if you're lazy. With all due respect, Your Honor, he has no editorialize on direct. I have a right to ask a question that is leading on cross and the jury I think has a right to know that that's the difference between cross and direct. I object to his making an introductory comment before he asks the question on his direct examination. That's my only objection.

THE COURT: Overruled. Proceed.

THE WITNESS:

A. So, what was the question?

Q. The question is as follows. When Judge Nixon first discussed Drew's case and his involvement in it, what did he say?

MR. FAWER: I object, Your Honor. There's never been a suggestion I mean that's what's insiduous about this is that he just phrased the question by saying when Judge Nixon discussed the Drew Fairchild case and his involvement in it. There has not been a scintilla of evidence in this courtroom of his involvement in anything concerning the Drew Fairchild case except in the mind of the prosecutor and now the verbalization of that miscontention. I object.

MR. WEINGARTEN: Your Honor --

MR. FAWER: Excuse me. I beg your pardon.

MR. WEINGARTEN: I said Mr. Fawer must have missed much of the evidence in this case.

MR. FAWER: I don't think anyone in this courtroom will see.

MR. WEINGARTEN: We'll see. May I proceed?

THE COURT: Proceed.

MR. WEINGARTEN:

Q. What did Judge Nixon tell you first off about his contact with Wiley Fairchild and Bud Holmes in the Drew Fairchild case?

A. I believe that there's only been one statement that Judge Nixon has made to me with respect to the Drew Fairchild case and as I told you this morning, he made the statement to me that Mr. Fairchild had asked him to talk to Mr. Holmes about Drew's case.

Q. Stop there for one second if you may.

A. Okay.

Q. In connection with that statement, did Judge Nixon indicate to you that Wiley Fairchild had expressed some concerns about the handling of Drew's case?

MR. FAWER: Object, Your Honor. He's asked the man -- what he wants to do, he will not let him finish, stop in the middle of his statement and he wants to parse the answer and add in it a different phrase that's totally unfair. He asks him, then stops and says and adds a factor that is not in the statement and I think it's only fair that the man be permitted to say as he did this morning frankly exactly what the judge said and that constitutes the statement. No matter what he would like to add by virtue of the question it doesn't change the witness's testimony as to what Judge Nixon said and it seems to me it's unfair and repetitious of what was said this morning and the witness has just testified now that. It's the second time he's being asked the same question.

THE COURT: Proceed.

MR. WEINGARTEN:

Q. Please continue.

A. Okay. There was a sense that Mr. Fairchild's concerns about Drew's case and that that was why he was asking Judge Nixon to talk to Mr. Holmes about the case and Judge Nixon simply was saying that I did talk to Mr. Holmes about the case and have -- and was saying that to me that he did.

Q. Did Judge Nixon indicate to you that Wiley Fairchild had expressed those concerns before?

A. I got the sense or the belief that there had been an expression of his concern before, but I don't have any personal knowledge of that. I don't know a way to nail that down. But yes, I think that his concerns had been there for sometime.

Q. All right. And what exactly did Judge Nixon tell you he did about Wiley Fairchild's request?

A. Said he talked to Mr. Holmes about it.

Q. And did he indicate to you what Mr. Holmes's response was?

A. That Drew Fairchild's case was okay, that there was not anything going to happen in Drew Fairchild's case.

Q. And did Judge Nixon indicate to you whether or not he conveyed that information back to Mr. Fairchild?

A. He did.

Q. And what did he say?

A. Said he told Mr. Fairchild that I believe he called him Wiley. Told Wiley that.

Q. Now when is your best recollection as to when Holmes asked you whether or not Wiley Fairchild had taped the call?

A. I think that that happened sometime after my grand jury testimony in July of 1984.

Q. And how do you think that?

A. Beg your pardon?

Q. How do you date that?

A. How do I date that? Well, I date that because -- I'm confused about your telephone calls. You have now switched to the telephone call that Judge Nixon made to me at my home; is that correct?

Q. No. Excuse me.

A. Let's come back and clarify what telephone call you're talking about.

Q. I apologize. Your first notion that an investigation was under way is when Judge Nixon called you; is that correct?

A. Yes, that's correct.

Q. Is it fair to say that would be in April, 1984?

A. That was April of 1984.

Q. And when did Bud Holmes first discuss with you anything related to the investigation?

MR. FAWER: The investigation or the taping is your question before.

MR. WEINGARTEN: I'm getting to it.

MR. WEINGARTEN:

Q. The investigation.

A. Well, I'm saying to you and I think I've said before that Mr. Holmes may have talked to me about this investigation before I went into the grand jury the first time. He may have talked to me about this investigation and probably did. Okay.

Q. Now do you recall testifying in the grand jury that Bud Holmes contacted you immediately after your first notice of the investigation?

A. Okay. And that was with respect to the telephone call that Judge Nixon made to my home and that I had reference to the grand jury investigation. It's my belief and so we don't have any misunderstanding and if I'm wrong show me where I'm wrong. It's my belief that Judge Nixon's telephone call to my house that I have earlier told you about that I did not discuss that telephone call or Mr. Holmes did not discuss that telephone call with me until after I had been in the grand jury.

Q. All right. Why don't you just take a look at Page 33 to refresh your recollection.

A. Okay.

Q. See what that does.

A. And it says immediately after this investigation occurred.

Q. Why don't you just continue reading a little bit more.

A. Okay.

Q. All right. How are you talking there or does that change anything about when Bud Holmes first started talking to you about it?

A. No, it does not because I think I really believe that I had reference then to this investigation meaning this grand jury investigation. I think that has -- if you'll look in my testimony a little bit further you'll see where I refer to this grand jury investigation.

Q. So Bud Holmes -- I see what you're saying. You're saying grand jury as opposed to investigation?

A. Right, that's correct.

Q. I'm glad to clarify that.

MR. WEINGARTEN: Thank you, sir.

MR. FAWER: It may be clear to somebody but I think we need to clear it up so the jury can understand it too.

RE CROSS EXAMINATION

MR. FAWER:

Q. April, Judge Nixon calls you, right?

A. Yes, sir, he does.

Q. You go to an interview in Jackson I guess in April, May 10th right?

A. That's correct.

Q. Between Judge Nixon's calling you which was when he was incensed and hot about the accusation between those two dates you may have spoken to Bud Holmes but not with respect to the quote the telephone call, correct?

A. That's correct.

Q. From may 10th you go to the grand jury in July so does Judge Nixon, so does Bud Holmes, right?

A. That's correct.

Q. It's after that and that's what you allude to is the grand jury investigation that Bud Holmes and only Bud Holmes begans talking to you asking you whether or not you had been questioned about the telephone call from the farm, right?

A. That's correct.

Q. Just trying to get it straight.

A. That's correct.

Q. That's what we were just working on. That's the sequence dealing with it chronologically right?

A. That's correct.

Q. And it is Bud Holmes and only Bud Holmes frankly or all of the people we're talking about whoever during the course of this investigation from day 1 from April on the first minute you know of the investigation preceding the grand jury from that date right through the time you go to the grand jury the second time, the only one who ever discusses with you the phone call from the farm and use that as a descriptive?

A. Right.

Q. The only one is Holmes who discusses it with you after July 20th?

A. That's correct.

Q. On February 15th?

A. Right.

Q. And back again at your February 18th the only one who ever discusses it?

A. That's correct.

MR. FAWER: Thank you very much. No further questions.

THE COURT: Are you through with the witness? Thank you sir. You may step down.

ALLEN JACKSON,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LITTLE:

Q. Would you state your name, please?

A. Allen Jackson.

Q. Mr. Jackson, where do you live?

A. Here in Hattiesburg.

Q. What is your occupation?

A. I'm a consulting geologist.

Q. Mr. Jackson, what is the extent of your education?

A. I was awarded a bachelor of science degree in geology from Louisiana State University in 1947, a master of science degree in geology from the same school in 1951.

Q. What did you do after you graduated from college?

A. I went to work for the Humble Oil and Refining Company, which was the predecessor of Exxon. I worked for that company as a geologist for approximately seventeen years in various places in the country as a geologist in exploratory and development geology.

Q. In particular what areas of the country did you work?

A. I started out in northern California. I was transferred to south Louisiana, I worked in the area of south Louisiana for about four or five years, then I was transferred to Laurel, Mississippi. I worked in Laurel and then in Hattiesburg from about 1959 to 1969.

Q. In your seventeen years with Humble Oil, what positions did you hold?

A. Various positions, usually dealing with exploratory or development geology in the oil business. I was a district production geologist in south Louisiana and was district production geologist in the Hattiesburg district. Also was, when I left was a senior geologist in the southeastern region.

Q. When did you leave Humble Oil?

A. 1969.

Q. What have you been doing since then?

A. I've been consulting geologist specializing in oil and gas exploration work and development work in the southeastern United States.

Q. How long have you been doing geological work in Mississippi?

A. Since 1959.

Q. Are you a member of any professional societies?

A. Yes, I'm a member of the Mississippi Geological Society, a member of the American Association of Petroleum Geologists, and as a Certified Professional Geologist number 2006, I'm a member of the American Institute of Professional Geologists.

Q. Have you held offices in those societies?

A. Yes, I have been secretary, treasurer, vice president and president of the Mississippi Geological Society, and have also been secretary, treasurer, vice president and president of the Mississippi Chapter of the American Institute of Professional Geologists.

Q. In the course of your work as a consultant over the last 16 years, have you had occasion to testify in proceedings?

A. Yes, I have.

Q. What sort of proceedings?

A. Most of my testimony has been in regulatory commission work such as Mississippi Oil and Gas Board, Alabama Oil and Gas Board, and the Louisiana Mineral Conservation Commission. I have done some court cases.

Q. In your work, do you have occasion to place values on oil properties?

A. Quite frequently.

Q. Are you familiar with standard geological methods for evaluating oil property?

A. Yes, I am, and I use them.

Q. In the course of your work as a geologist have you become familiar with the geology of Mississippi and Alabama?

A. Yes, I have.

Q. In particular, have you had occasion to become familiar with a field known as the Hatters Pond field?

A. I have.

Q. And the Green Creek field?

A. Yes.

Q. And the McRainey field?

A. Yes.

MS. LITTLE: Your Honor, we would submit this witness as an expert.

MR. FAWER: No objection.

BY MS. LITTLE:

Q. Mr. Jackson, did the United States contact you recently to ask to you provide consulting services with respect to this case?

A. Yes, they did.

Q. Did you agree to do so?

A. I did.

Q. Are you being paid by the government for your services?

A. I am

Q. What is the rate of your compensation?

A. 62 dollars -- $62.50 cents an hour, plus expenses.

Q. That your standard rate of compensation?

A. It is.

Q. Do you also know Wiley Fairchild?

A. Yes, I do.

Q. How long have you known him?

A. Approximately fifteen years.

Q. Have you done consulting work for him?

A. Yes, I have.

Q. Do you presently do consulting work for him?

A. Yes.

Q. Are you compensated by him?

A. Yes.

Q. Is that in the nature of a commission?

A. It is in the nature of a commission in that he does not pay a fee in cash. If I recommend something to Mr. Fairchild that he participate in a drilling venture or some type or in a royalty play, and he acts on my recommendations, then he does give me a one per cent interest in whatever he winds up acquiring.

Q. In the course of working with Mr. Fairchild over the years, have you had occasion to discuss his oil investments with him?

A. Some of them, yes.

Q. Have have you ever had an occasion to discuss his relationship with Judge Nixon?

A. No.

Q. Now, for the benefit of the jury, could you describe briefly, very briefly, what the basic steps are in drilling an oil well? Once the site has been selected and the machinery brought in, what are the steps to follow?

A. Basically the drilling rig starts drill a hole, they will drill down through freshwater sands, and depending on the depth that the well is projected to go to, they will usually set what they call a string of surface casing through known freshwater sands.

Q. What is casing?

A. Casing is the steel pipe put in the hole to keep it from collapsing while you're drilling it.

Q. Is there testing that's done during this drilling process?

A. Yes, sometimes certain objective sands are encountered that they are not sure of, they will be a testing program done on it. Normally the wells in Mississippi are drilled to a total depth which is planned ahead of time, and then at that time electric logs, radioactive logs and side wall cores are taken to evaluate the well.

Q. Let's go back to while you're actually drilling, what kind of testing is done or can be done while the well is being drilled?

A. About the only testing that can done while it's actually drilling is putting a mud logger on the well, which is a man who specializes in analyzing the cuttings that come up, as the hole is drilled the rock is cut up by a bit. The cuttings are brought up to the surface by drilling mud, which is poured down the center of the drilling pipe and up the outside of the pipe. Those cuttings can be analyzed if those shows are encountered.

Q. Is that what's known as core analysis?

A. No, this is not. That is mud logging. Corresponding is another procedure, coring is something that can be done if you know ahead of time where you expect to encounter your objective reservoir rocks. Then you would pull the bit out of the hole and go back in with a specialized piece of equipment called a core barrel which you would actually take a sample of the rock as you drill through it, bring that sample up to the surface, analyze it to determine if there is any hydrocarbon in the rock.

Q. Once the drilling has reached the total depth, you began to describe the progress test that's done then.

A. After total depth has been reached, then the normal procedure is to run what we call a suite of logs which would include electric logs, sonic log, and radioactive logs, and if diamond coring has not been done during the drilling of the well, we would take side wall cores. Side wall cores is a precision instrument that is fired from a gun in the hole and shoots a small steel hollow bullet into the formation, like a small hollow point bullet. It shoots in there with two cables tied on the end of it, small aircraft cable. The gun is pulled out of the hole and retrieved and the small samples which are taken from the wall of the hole then are bits of rock which we can analyze.

Q. Once the testing procedure has been completed, what happens to the well?

A. Then my part of the job at that time would be to analyze all of the electric logs, radioactive logs and determine if I thought that the well would produce, and where, what depth it would produce, from what sand or limestone, what the reservoir rock was, and then to decide whether to set another string of casing to protect those sands and to produce the well from, or if it did not look to be a commercial operation then to recommend that the well be plugged and abandoned.

Q. Is it fair to say the well is completed once the testing process is over?

A. Once the testing process and the evaluation has been completed, and assuming that it is then determined that it is going to be a good well, then another string of casing would be run and cemented in place and the well would be completed through that string of casing. That's usually called a production string.

Q. Is there sometimes a delay between the time the well is completed and it actually begins producing?

A. Usually there is a delay, especially so in the case of gas wells.

Q. Why is that?

A. Gas well cannot be produced until it can be connected to a gas gathering system, which means pipelines and into an interstate or intrastate system. Because natural gas cannot be sold until someone starts to use it, in effect, someone has to light a match and light a burner before you can sell natural gas.

Oil is a little different situation. Oil can be produced into tanks and stored so that an oil well can go on production usually much sooner than a natural gas well can.

Q. As the drilling and testing process that you've described goes on does that yield information about the well that's being drilled?

A. It does.

Q. Does that information aid in assessing the value of the well?

A. Yes, it does. Because in the process of drilling the well, normally a geologist or geologist supervising a mud logger will be looking for what we call hydrocarbon shows in the drilling process and will be looking for objective sands that were expected in the drilling of that well, and looking for the depth that those sands would be encountered so if a well encountered an objective sand at a depth less than was objective, in other words higher in the section, this sometimes may be good news, sometimes maybe not.

Q. Does there come a point in this procession you have described when you can basically tell whether it will be a good well or not?

A. Two points usually when I can determine it.

Q. What are those points?

A. If I take a diamond core through an objective sand and find oil or gas in that diamond core, then at that point I'm usually confident I have a good well. If I don't take a diamond core or if I take one and miss the sands, then the electric logs and the analyzing of those suite of logs and side wall cores will tell me if I am going to have a good well.

Q. Does it happen on occasion that even if the testing process shows a well is good, something goes wrong later?

A. Yes, it can happen that way.

Q. Would you say that a happens often or rarely in your experience?

A. Relatively rarely. I would doubt that it happens as much as five per cent of the time.

Q. Are you familiar with standard techniques used to appraise or evaluate oil property?

A. Yes, I am.

Q. And have you had occasion in connection with this case to review geological data pertaining to three particular wells?

A. I have.

Q. What are those wells?

A. There are three wells I was asked to review the geology and to make prices on. That was the Rogers well in Green Creek field, Marion County, Mississippi; the Ross well in the McRainey field in Covington County, Mississippi, and the Wilkie well in the Hatters Pond field of Mobile County, Alabama.

Q. Okay. Can you tell the jury what the status of each of those wells was on February 25, 1981, based on your review of the data? Were they being drilled, completed, what stage were they at?

A. The Ross well in McRainey field in 1981 had already begun producing. It had started producing I believe in September -- I have notes on this. May I refer to my notes?

Q. You can refer to your notes.

A. According to the records that I got from the Mississippi Oil and Gas Board and from some of my own files, the Ross well first started producing in September of 1980?

Q. How about the Rogers well, what stage was it at in February of 1981?

A. In February of 1981 the Rogers well had been tested and completed and was still waiting on a gas gathering system to connect it into the gathering system for that field.

Q. How about the Wilkie well, what stage was it at in February of 1981?

A. In February of 1981, it was in the same stage, the well had been drilled, tested and completed and was shut in awaiting connection to the gas connection system in the Hatters Pond field.

Q. All the wells were completed as of February, 1981?

A. That is correct.

Q. And the Ross well was actually in the production stage?

A. It was.

Q. Okay. Let me ask you the same questions for February of 1980, what was the status of each of these wells?

A. In February of 1980 the Ross well was still drilling.

Q. Okay. How about the Rogers well?

A. The Rogers well in February of 1980 had already been drilled, logged, and seven inch casing had been set, and they were waiting on cement on February 25, 1980.

Q. Had it been tested?

A. It had not been tested.

Q. The Rogers well?

A. No, February of 1980 the well had only been, was being prepared for testing. Casing had been set and had been cemented. The last, the report for February 25th, 1980 reported that five squeeze jobs had been performed on the well, were not waiting on cement.

Q. Had the electric logs been run?

A. All electric logs and side core tests had been run an evaluated.

Q. How about the Wilkie well. What stage was it at in February of 1980?

A. The Wilkie well in February of 1980 had been logged and was being, it had been logged and was being evaluated. It had not been tested or produced at that time.

Q. Were the electric log results completed, however?

A. Yes, that well had been diamond cored through the objective sands and the cores and electric logs had been completed and already were available.

Q. By the way, do you have any knowledge as to whether Wiley

Fairchild had access to this core data you had?

A. On the Wilkie well he did have access to it.

Q. How do you know that?

A. He had sent them over to me to ask me to evaluate them.

Q. Okay. Now in preparation for your testimony here today, have you performed some calculation as to the fair market value of these three wells in February of 1981?

A. I have.

Q. Okay. Let's start with the Wilkie well?

A. In the Wilkie well in February of 1981 --

Q. Excuse me just a second. Can you describe just very, very briefly what is the method of calculation you used to arrive at fair market value?

A. In the case of these three wells, I used a method that I called the volumetrical indications in which I used the geology to determine how much area is covered by the productive horizons available to this well and the thickness of the reservoir rock in this well, and from that, and from the water saturation, the oil saturation of the sands, I determine what the volume of oil and gas will be ultimately produced by this well.

MS. LITTLE:

Q. Is that the most accurate method that you know of to compute fair market value?

A. No, the most accurate method of all is to take a well that has been producing long enough to have established a stable rate of production and a stable decline and using that decline then predict a future productive life of the well and from that determine the reserves.

Q. If the well is not yet producing, is the volumetric method the most accurate?

A. In the absence of production, the volumetric method is.

Q. Using these volumetric calculations, did you compute the fair market value of the Wilkie well in February, 1981?

A. I did.

Q. What did you compute it to be?

A. $12,041.60 per acre.

Q. What would the value then be for three acres?

A. Three acres be $36,125.

Q. Did you also compute a fair market value of the Rogers well as of February 25th, 1981?

A. I did.

Q. Was that also using the volumetric evaluation?

A. The same procedure.

Q. And using those calculations what did you arrive at as a fair market value as the three acres in that well?

A. For the three acres that comes to $11,858.

Q. And turning to the Ross well, did you perform similar calculations?

A. I did.

Q. What did you compute to be the fair market valve 5 acres in the Ross well in February of 1981?

A. $5,385.

Q. So what would be the total of all these acres in February of 1981 the fair market value?

A. $53,368.

Q. Did you make similar calculations for these wells as of February 25th, 1980?

A. I did.

Q. Let's start with the Wilkie well. Did you make similar volumetric calculations?

A. Yes.

Q. And what did you arrive at as the fair market value as of February 25th, 1980?

A. For the three acres?

Q. The three acres in the Wilkie well.

A. Would be $20,954.

Q. And did you compute the value of three acres in the Rogers well as of February 25th, 1980?

A. I did.

Q. What figure did you arrive at?

A. $5,765.

Q. And for the Ross well did you compute the value of 5 acres fair market value of 5 acres in the Ross well as of February 25th, 1980?

A. I did. 5 acres of Ross well would have had a fair market value of $6,130.

Q. So what was the total of this acreage the fair market value in February of 1980?

A. In 1980 the fair market value is total 11 acres would have been $32,849.

Q. Just to clarify the fair market value figure. Does that necessarily mean that that was the price that everyone was paying at that time?

A. No, it does not. The fair market value is an artificial term that is used to determine the worth of a property. It's used in appraisals and estate and gift tax evaluations. It's used by banks in determining loan values and such things. It does not mean that I can actually show that someone paid that price exactly for that property.

Q. Is it likely that there were people paying both more and less than that amount?

A. Very probable.

Q. Is that your best estimate as to the actual worth of those wells at that time?

A. That is my appraisal of the worth of those wells.

MS. LITTLE: Nothing further.

MR. FAWER: May I, Your Honor?

THE COURT: Yes.

CROSS EXAMINATION

MR. FAWER:

Q. Mr. Jackson, I'm Mike Fawer. We've never met have we?

A. No, we have not.

Q. Thank you. It's a pleasure. I'm not a geologist nor do I own any oil and gas wells so pardon me if some questions are naive. I take it that you have done a fair amount of work for Mr. Fairchild over the years?

A. Yes, sir, that's correct.

Q. Do you work for him on a standard fee basis or are you kept on retainer or how does it work?

A. It's a very I guess you might call it unusual situation, Mr. Fawer, in that I do not submit bills to Mr. Fairchild for any type of a fee. My work with him has been that when he needed me, I told him I will be available and that if I recommended something to him that he buy in on a drilling deal or buy in on a royalty play that I expected him to then include me in what he buys as my fee.

Q. Included in the action?

A. Right.

Q. I was interested because I never heard the phrase used play outside of Vegas or Atlantic City. That's what you're talking about a royalty play?

A. Yes, sir. That's correct.

Q. It's used that way because that's just what it is. It's a gamble and if it's successful you're in for one percent of the action?

A. That's correct.

Q. So the jury understands before we talk a little bit further about some of this, this business which is very much in multi billion dollar business I mean it's greater perspective is that it's a gamble from beginning to end?

A. Mr. Fawer, may I amplify on that a little?

Q. Sure.

A. As I said in my qualifications, I work for Exxon. That's the worlds largest oil company. And part of my job as a geologist for that company is to help cut down risk. You're quite right in that it is a risky business. And the idea of science and geology and geophysics and other tools that are used in exploratory and in development drilling is to cut down on the risk so that it's not a matter of chance. And I guess the best way I could describe it would be that if I go to Los Vegas and play gambling tables I am gambling. The Caesar's Palace is not. They know what the odds are, they know the risk and they know if they do it in a certain manner and a certain way that they will always win and that's the way it is with the oil companies that I work for. We have elimated a lot of the risk and what we cannot eliminate then we use what we call a risk adjustment so that when I recommend buying a piece of property or when I put a deal together myself which I do infrequently, I use a risk adjustment figure to determine what I think that the chances are that I'm going to make a good well or not make a well. And then adjust the price that I'm willing to pay accordingly. So although it is a gamble, I try to feel that I have elimated some of the unknowns in there so that my gamble isn't quite as much of a gamble as an outsider would have.

Q. Just speaking prospectively though when you just spoke you talked about looking at a potential well and then estimating what it was for the future, correct?

A. That's correct.

Q. But you're sitting here in a very different position today. You know precisely what these wells ultimately did and you're going back and projecting what you would have valued them for five years ago?

A. That's correct. I'm in effect trying to restrict my view of that well to you might say a window that was open on that day.

Q. Exactly. Your information it's fair to say -- well, I've read -- you tell me. I said that 8 out of every 9 wells that are drilled just drilled are dry holes. Is that an accurate -- relatively accurate number?

A. It is.

Q. For every 9 holes, every 9 wells drilled, 8 of them useless, wasted, right?

A. That's correct.

Q. Mills of dollars at least hundred thousand dollars somebody spent for nothing, correct?

A. Correct.

Q. Really talking best we're talking about one out of every 9 is even it may be commercially feasible, correct?

A. That's correct.

Q. What we mean by that is that one out of 9 is not plugged and abandoned. It goes onto production, right?

A. Yes, sir.

Q. But that doesn't mean it's going to ever get anything but salt water after that. Hopefully it will but we don't know?

A. Well, one out of one if the completion attempt is made which by that they run casing and attempt to complete it then out of those, I believe about 95 percent of them will produce some oil.

Q. Some oil, but you know and I know we don't have to waste a lot of time. A well can cost millions of dollars to complete?

A. That is correct.

Q. To get on line whether or not that money is ever paid back is still a risk?

A. Absolutely.

Q. Let's look at the Ross well for a minute. You viewed that as worth 5 years later looking back through your window opened five years earlier the Ross well according to you for 5 acres worth 6,000 bucks in 1980, worth only 5,000 in 1981, right?

A. Correct.

Q. What would you pay for it in 1984?

A. Something less than that. You want me to calculate it?

Q. You don't have to. I'll tell you. You wouldn't have paid 2 grand for it?

A. That's probably correct.

Q. You'd be crazy to pay a thousand bucks for it. You barely cleared $1,600 right?

A. That's correct.

Q. You're going to but somebody put out over 2,000 bucks for it, right?

A. That is correct.

Q. Took a loss, right?

A. Well, is still producing.

Q. It could still -- do you want to see the size of the checks?

A. No, I have the production records from the state.

Q. Of course, so do I. You know what the kind of production that's coming out of that. Tell the jury what 5 acres are going to get you. Is it going to get you 10 bucks a month?

A. I haven't figured that, Mr. Fawer. I could right quick I guess but I don't know.

Q. So we don't waste a lot of time. It's a bummer?

A. That's correct. It was a bad well.

Q. Bad well. Somebody made a mistake in even drilling the thing?

A. No, I don't believe that's quite true because I did a calculation from that point to see if Union Oil of California who drilled the well did they get a bad well and they didn't. That well is made about the total revenue from that well is about $4 million.

Q. So the jury understands of that 4 million, this gentleman you know that he has -- this is Judge Nixon. You've never met him?

A. No, sir I have not.

Q. Mr. Jackson, Judge Nixon. He has five, thousandths something around that of that royalty interest, right?

A. Yes, sir.

Q. That five, thousandths while the well may have produced 4 million, correct?

A. That's correct.

Q. He got less than 1600 for it, right?

A. Right.

Q. You know that, we all know that?

A. Right.

Q. He paid according to the deed over 2,000 for it?

A. That's --

Q. Am I right?

A. Yes, sir.

Q. We're all dealing with the same instruments okay?

A. Right.

Q. Union Oil may have made -- there may have been $4 million. Did you ever calculate did they make 4 million or is that gross revenue?

A. That's gross revenue.

Q. How many million did it cost to drill it?

A. About two.

Q. They got 4 million out of it. They made some profit there, right?

A. Yes, also you've got to subtract from that operating expenses and royalties so they didn't make even 2 million out of it. It was not what I would call a very successful well.

Q. What we're basically saying, it wasn't much of a well. Let's go onto the next one. The Wilkie well was a pretty good well, damn good well?

A. Very good well.

Q. As I understand it, you and I can discuss that when a well is drilled the drilling of it the completion of it does not by any means guarantee that it's going to be commercially successful correct?

A. That's correct.

Q. The way we do evaluate it the way you evaluate it is that you need these technical data that you described on direct examination. The logs, the electric logs the sonic log, the cores the dimond cores and any cores that may have been done; is that right?

A. Yes, sir.

Q. You it indicated that you have some unique knowledge of this because Mr. Fairchild apparently gave you access to some information?

A. He did.

Q. And you had that in your file?

A. I did.

Q. And you know when he gave it to you?

A. I don't remember the date because I don't write on there the date that it came out I do know it was about that time.

Q. Well, let's deal with that. If you want to take me. I don't have any interest in the Wilkie well. There I am in February, 1980. I'm really interested in it, okay. Somebody told me that there is some well over there in Hatters Pond and it's good stuff, okay. And I say well, I have a friend who's a geologist and I would like to get him this information. He tells me that I need the core analysis and the sonic log and the electric log. What do I do? How do I get it? I don't have any ownership. I want to get it to analyze it.

A. If you don't have any ownership, it has to be done.

Q. I have to have some ownership?

A. Right.

Q. Who gets the logs? Do I have to have a working interest or some sort?

A. Yes.

Q. If I have a working interest then I can get it?

A. That's correct.

Q. If I have the working interest too I automatically get it?

A. Not unless you request it.

Q. And so you would have to determine first was Mr. Fairchild did he have a working interest?

A. He did.

Q. And did he request it?

A. Yes.

Q. Now do we agree that without this information or put it another way. Until you had access to this information your entire calculations you wouldn't be able to make it. You wouldn't be able to make a really serious fair market value judgment looking ahead without that information, right?

A. That's correct.

Q. Well, let me show you a couple of documents okay. First of all were you aware -- who drilled the well?

A. Exxon.

Q. Did you know that all of the analysis by rule of the Alabama Board of Royalty Oil and Gas Boards and a request of

Exxon deemed all of the analysis secret for six months?

A. I did.

Q. When did it first become available?

A. According to my records, it became available in the State of Alabama in August of 1980.

Q. That's not February. That's August, right?

A. That's correct.

Q. However, the working does that include those who have working interests?

A. No.

Q. The working interest people have it?

A. That is correct.

Q. Well, then I guess we got to determine when he got his working interest. You have to sign an agreement, right?

A. Not necessarily.

Q. But without it you're not going to get it?

A. A verbal agreement will be acceptable.

Q. Do you know in this case when he got them?

A. I don't know when he got them but I do know that Exxon agreed to give them to him because they had an agreement that would be signed at a later date.

Q. How do you know that?

A. Well, I worked for Exxon for nearly 20 years.

Q. You know that of your own knowledge? Because I'm going to show you some documents.

A. I know from the files that I had which were sent to me by Mr. Fairchild.

Q. Show me.

A. That he had --

Q. What is that first of all?

A. This is the Core Laboratories, Incorporated.

Q. When did you get that?

A. I got that in December of 1979.

Q. You got that in December of 79?

A. Yes, sir.

Q. Let me suggest. Let me show you a few documents. Maybe I'm misunderstanding some of it, but let me show you something. This is a document that comes from the files of Fairchild, okay. I don't know if you've seen it. It's dated December 17th, 1981.

A. I have never seen that.

Q. Of course you haven't but let's talk to the jury about what it says. Now that you've seen it signed by Mr. Jarvis. Do you know Mr. Jarvis?

A. Yes, I do.

Q. He was at the time administrative assistant to Mr. Fairchild, right?

A. That's correct.

Q. And if I read it correctly, is Mr. Jarvis writing to Transco who I guess he wants to sell the gas, right?

A. That's correct.

Q. So the jury understands the owner of a working interest or even the royalty interest or just the working interest you sell the gas?

A. Only the working gas.

Q. Someone like Fairchild who had a working interest can if he chooses make his own arrangement sell his proportional interest in the gas, right?

A. Yes.

Q. He was negotiating with Transco to do that?

A. That's correct.

Q. And he's writing to them and he's saying: Mike, I've gone through our files looking for anything you might use to determine the reserves. As you can see, I don't have a copy of the logs. What date is that?

A. December 17th, 1981.

Q. May I?

A. Just a minute. I'm not through with it.

Q. Sure.

A. Because even though he didn't have a copy of the logs, he did have a copy of the core analysis.

Q. That's because you're saying you got this at sometime, right?

A. That's correct.

Q. I understand that the working agreement in that case was executed in February of 1981 and that it was thereafter that he got anything with respect to it. Do you have anything to suggest to the contrary, Mr. Jackson?

A. I do.

Q. Thank you. You told this -- am I correct that you indicated -- and the core analysis. Do you know for a fact that that was in his possession in February 80 or did you presume that based on this necessity of writing a report here?

A. Well, Mr. Fawer, I don't presume anything.

Q. Well, I see where you said in a report that they had the analysis, didn't you?

A. I did because he had sent it over to me.

Q. But you never knew the date on which he sent it over, did you?

A. I would have at the time, but as I said, I didn't write it on there. I don't really know exactly.

Q. Exactly, but you came into this courtroom in all good faith I understand that and Mr. Fairchild's really the one who got you to come in here. He recommended you to these people?

A. I don't know that.

Q. You don't know that?

A. No.

Q. Do you know of any connection you have with this case or with them other than Wiley Fairchild was a Government witness?

A. I haven't asked that question of them but I suspect it came through either the other attorney or some other -- it could have come from Mr. Fairchild one or the other.

Q. How much money you made through Mr. Fairchild in the last five years?

A. Have I made?

Q. Yeah, in the last five years, how much money have you made through him? When I say that, I mean not just money he has paid you for your services on an hourly basis but on royalty plays anyway in which he is responsible directly or indirectly money going in your pocket?

A. It would all have to be from interest and wells because he hasn't paid me a fee.

Q. I take it you have some interest?

A. I do. I have some interest. They're very small. I'd have to guess. I don't know the answer to this but I would say it's probably somewhere oh, $5,000 a year or less. Probably less than he pays a janitor.

Q. Than he pays what?

A. Pays a janitor.

Q. I have no knowledge what he pays his janitor if he has one. Up until from January, 1980 until August of 1980, you know and I know that the Alabama Department of State Oil and Gas Board deemed these records confidential. All of the analysis, core analysis, et cetera, were deemed confidential, correct?

A. If they had them. The core analysis is not necessarily sent to the oil and gas board.

Q. So you don't have occasion to make a mistake, look at Defendant's Exhibit 34 and tell the jury what it is?

A. This is a letter from Mr. --

Q. Excuse me. I have have put the number on that I already numbered that. That should shall 35. I beg your pardon.

A. It has Defendant's Exhibit 34.

Q. Should be 35. To speed it up, this is a letter from the board is it not to Exxon who did the drilling. On the letter of January 14th requesting confidential status for the above captioned well. The electric logs cuttings and cores shall be kept confidential for a period six months after these correct?

A. Correct.

A. Go ahead.

Q. Official document of the state Oil and Gas board, correct?

A. That's correct.

Q. That's on the Wilkie 28?

A. It is.

Q. Well we're talking about?

A. That's correct.

Q. As far as we know for six months the world had no access, the world at large had no access to that?

A. Only the working interest owners in that well.

Q. And that working interest, only when you sign that agreement are you entitled to those logs, am I correct?

A. Legally you're only entitled to them after you have signed the agreement. There are cases where I know of that it happens; not necessarily.

Q. Tell the jury the date before which the agreement could not have been signed?

A. February, this is exhibit number, -- this, well, this one?

Q. Yeah, another mistake. Just human. 36.

A. All right. Exhibit 36, which is Wilkie gas unit 28, from Exxon Company, says gentlemen, attached are two copies of operating agreement covering the unit, please execute and return one copy to this office.

Q. Okay. Which means at least as of February 3rd of 1981 Wiley Fairchild had not yet executed the working agreement pursuant to which he had a right to copies of that analysis, correct?

A. Correct.

Q. Okay. And as you have already told us, you have no knowledge as to when he came into possession of that analysis because you don't know?

A. That's correct.

Q. Correct. But you do know that in December of 81 he is writing, or his company is writing to Transco and telling them they still don't have any copy of the logs as of that date, right?

A. The letter from Mr. Jarvis, yes, sir.

Q. Thank you. There was, if I understand it, at the request of the government, you wrote a report in which you stated that the core analyses were in Mr. Fairchild's possession, am I correct?

A. They were in my possession. The will only place I got them from Mr. Fairchild, Mr. Fawer. I can't change that.

Q. Excuse me, sir. You just told us you don't know when you got them, am I correct? Am I correct?

A. You are correct.

Q. But you said, I don't think -- do you have your report there on the Hatters Pond field? Why don't you just slip it out, let's call it Defendant's 37. So nobody makes a mistake, let's look at it. You, this is the document of which you gave those numbers before, right?

A. That is correct.

Q. This is the way you calculate, we'll come to that in a minute. First line of it, you told us from the stand you didn't know when you got it, but you felt free to say on Exhibit 37, as of February 25th, this well had been diamond cored and the core analyses were in Mr. Fairchild's possession. You don't know that as you sit on this stand any better than I know it, do you?

A. Mr. Fawer, I was perfectly confident in my statement that I did know it.

Q. You're not so confident now, because you've been shown some other facts which were in the records which you hadn't seen, correct?

A. No, sir, that's not correct. You showed me, that is correct. The fact I had not seen those does not change my opinion.

Q. Let me talk about it just a minute. Let me just ask a question. Just tell me this, are you telling me you did or you that you do or you do not know whether in February of 1980 as a fact they had them in their possession?

A. As a firm fact I do not. I feel that I did have.

Q. You feel, but you don't know it, but you stated it as a fact here?

A. That's correct.

Q. You are willing to tell me though, now, are you not, that to the extent you have stated it as a fact, you wish to retract it as a fact, but simply an assumption on your part, am mean] I correct?

A. No, sir.

Q. What is it?

A. I feel like I had them in December and in January of 1980, and that I did have, made a good faith effort --

Q. Excuse me.

A. I dug them out of my files.

Q. December of 1980?

A. December of 1979 and January of 1980. This coring took place over a period of several days. And the core analyses are dated from December 19th this through January 4th.

Q. Nobody is quarreling Exxon did it. No quarrel. The Oil and Gas Board makes that record, the confidential records, right?

A. That is correct.

Q. So there is no quarrelling with that. The only question to you is, when did Fairchild get it, okay?

A. Correct. In my opinion he got it prior to January of 1980.

Q. That's your opinion right now?

A. That is my opinion.

Q. But you didn't indicate that was your opinion, you stated it here as a fact, is that a true statement?

A. It is.

Q. Thank you. Now, let's deal with the rest of it. So we understand, you kept, I mean you go through -- let me let you hold onto this, because I have a copy of it, okay. You go through a calculation that boggles my mind. I have difficulty dealing with those size numbers. Apparently you talk about, again, this is -- let me stop a minute. If they didn't have the logs, this whole evaluation is not something, if they didn't have that analysis, would you and I agree the ability to evaluate is in any way would just be, I mean just like flipping a coin, am I correct?

A. No, sir, that's not quite correct, because if I did not have the logs, core analysis, if I had no information on the well, then I would make an evaluation based on the behavior of adjacent wells.

Q. Okay. Would you like to --

A. I have done so.

Q. You know there are a bunch of dry holes around there?

A. There are, but there are, there is a producing well directly north of this well.

Q. That's right. This is at the southern most point of the field, right?

A. Correct.

Q. That's the worse point of that field in terms of the geological structure, am I correct?

A. Yes, that's getting toward the edge of the field.

Q. Edge of the field, maybe marginal, just don't know, correct?

A. Correct.

Q. The, there is some drilling just south of it, dry hole, right?

A. Correct.

Q. Just to the east or west of it, dry hole?

A. Right.

Q. Just to the east of it, dry hole?

A. Correct.

Q. Got to go north to get production?

A. By that time I think they pretty well pinned it down so the information that was available to them shows them where they need to go to get it.

Q. I understand. I'm trying to suggest to you, or ask you, that's what you have to be looking at and this information about the analysis and the core analysis and the other logs, right? You would be forced to look at that, that's all you have.

A. As I said, then I look at comparable wells.

Q. Fine. One thing we do know, in fairness, Hatters Pond was a nice, it had, there was some potential production there even though there is some dry holes, it was a nice oil field, right?

A. Probably one of the best oil fields in the southeastern

United States.

Q. Obviously as you reach the edge of it, you became more marginal in terms of its commercial potential, correct?

A. In general you could say that. In this particular instance it didn't work that way.

Q. I understand. Luckily, if, for example, do you have copies of the plat? Do you have copies of the map?

A. Yes, sir.

Q. Okay. If you had been the guy that drilled, that was in section 26. If you had been just a little bit over on unit 29 I'll wait until you get it. If you go over to 3749, see the unit? Just to the west?

A. Well, I don't have that track numbering, but I -- mine shows sections and geology. And well location.

Q. Well, okay. Well, forget east and west. Just say left and right. The one on the left, okay?

A. All right.

Q. That was a dry hole, right?

A. That is correct.

Q. The one to the south, you know, right down from it is a dry hole?

A. It was drilled afterwards.

Q. April 81, so was the own west. One to the left, drilled it, dry hole, one to the right, dry hole?

A. Right.

Q. Practical matter you wouldn't have had, you don't use that geology to help you at all when you're looking in 1980?

A. At the time the Wilkie well was drilled those wells were not available.

Q. Okay. All I'm saying is you're reaching towards the end of the field by anybody's calculation when you drilled the 28, is that correct?

A. That's correct.

Q. In any event, you drill it, as I understand it -- by the way, this well cost how much to drill, any idea?

A. I have seen the numbers on it, but I don't remember what they are. It's up in the several million dollars.

Q. Seven million.

A. All right.

Q. Ring a bell?

A. Sounds familiar.

Q. Okay. Is it fair to say that as you, when you drill a well, obviously each step you take you increase or should say decrease the risk factor of being non-commercial, that's the whole idea of trying to do your core analysis, do these other logs that you have, is that right?

A. That is correct.

Q. Okay. But despite, assuming you have excellent core analysis, assuming terrific results, terrific results from your sonic logs, your electrical logs, what are the other things you do, you had some other names there.

A. Radioactive logs, side wall cores, all those.

Q. Despite all of that, there is still the problem that even after you, what do you -- when you complete, not complete it, before you do your casing?

A. Evaluate it.

Q. You do your evaluating. When do you spud it.

A. Spud is when you begin drilling.

Q. Excuse me. When you cap it, you do you reevaluation, is that correct? See, I have some, I don't know how to talk?

A. Let me try to clarify that a little bit.

Q. Sure.

A. Once the well is drilled to total depth then this evaluation process takes place.

Q. We've completed that?

A. Then we run casing if it's going to be a good well, run casing and cement it in place.

Q. Run casing and cement it if you're going to go forward with the completion of the well?

A. That's correct, if it's going to be, if it's not going to be a well at that time we plug it.

Q. Okay. You abandon it usually?

A. Yes.

Q. Assuming we're going to go forward, fair to say the putting in of the casing itself has hazards?

A. It does, it's risky.

Q. Now beyond the evaluation, looks like a terrific well, we're beginning to dream of where we're retiring. You've done it, you've been there.

A. Right.

Q. Am I right?

A. Absolutely.

Q. Okay. You're not retired yet, though?

A. No.

Q. Okay. So you, what are the problems with the casing that you could have? I mean you got this great well, this reservoir of oil, not a pool, but those sands look like they're terrific.

A. Right.

Q. What can happen with the casing?

A. Mechanical problems can happen, casing can stick going in the hole, can get to the bottom and cementer can mess up and fill it full of cement rather than setting it. There are things that can happen and do.

Q. Not every day, otherwise we wouldn't have any oil wells; the problem with salt water itself presents a problem in terms of getting into the well and in effect making the well something less than commercial, is that true?

A. It can happen.

Q. That too of course would ruin the well. Its potential could be ruined that way, right?

A. Well, normally if saltwater is down there, I'm going to see it in that evaluation.

Q. I understand that.

A. So I'm not really concerned too much with saltwater damage at this stage of the well.

Q. What else are you concerned about in terms of putting it on line?

A. Getting the casing down, cemented, getting a good cement job and then usually we'll at that time take down the big drilling rig, move it out, and let the cement set up, get cured properly, bring in a workover rig and perforate or shoot holes opposite the zone we want to produce.

Q. Each of these, I'm sorry. Each of these present potentia mechanical problems?

A. All of them do.

Q. All of them. All of them can take what looks like a great well and present serious problems and at times ruin the well?

A. It can.

Q. In addition, as I understand it, you've got the problem -- I guess it is self-evident -- of the flucuation of the price of oil and the price of gas, what looks like it's worth doing in 1980 becomes commercially unfeasible three years later because the prices drop perhaps, correct?

A. That is what's happening right now.

Q. Right this minute, correct? Wells that may have been drilled two years ago you wouldn't drill them because the price isn't there to support it?

A. That's correct, the economics don't justify it.

Q. All of these factors go into what is the market value, right?

A. That is correct.

Q. And basically someone makes a judgment call, right?

A. That is the job that I try to do.

Q. And in this instance, though, you don't recall as you say, you have no awareness, you don't know when it is you might have analyzed this or told Mr. Fairchild what your evaluation was, did you? When did you give him an evaluation?

A. At the same time he sent me the correspondence.

Q. But you don't know again, the same problem, we don't have a date -- you don't have a report --

A. Excuse me.

Q. No, that's all right. I think I interrupted you. I'm sorry.

A. I did not write a report for him, which I never do for that matter. Because of that, I did not date these core analyses, the date I received them.

Q. By the way, those are diamond core analyses?

A. They are.

Q. They are reflected that way on the report?

A. They are.

Q. Okay.

A. For instance, core number one was cut from 18,057 to 18,117 feet, cut 60 feet, recovered 59 and a half feet, that is a diamond core.

Q. Okay. What does, what is squeezing?

A. Squeezing is a practice that you use to try to get a better cement job around the outside of your casing. When casing is cemented, the only way you can cement it, what we call primary cement job, is to pump the cement down through the casing and up the outside of the casing between it and the walls of your holes, what we call the annulus.

Q. Keep the saltwater out and keep the freshwater intact?

A. It's to isolate everything in the well. Puts your sands, reservoir rock you have encountered, isolates them from anything else that might be in the well. Then to go on with my answer to the squeeze job, then we will run what we call a cement bond log, run after the casing is set. The cement bond log then is interpreted, and if it indicates that a good primary cement job was not obtained, then a squeeze job may be initiated to be sure that you do have complete isolation. To do that they would go in and shoot some holes in that casing below the zone of interest and usually above the zone of interest, then they pump cement down there under pressure and force it out those holes into that area, annlus between the casing and the well bore, and by squeezing that cement out there, forcing it out under pressure, holding it there until it sets up, you have created an isolation effect. You then should have your reservoir isolated from any water, sands or any extraneous materials you don't want in there.

Q. Is that a costly process?

A. Relatively inexpensive. It's a minority part of it.

Q. Was it this well or one of the others that needed to be squeezed five times?

A. It was the Rogers well.

Q. Five times, they were unable, four times they were unable, dissatisfied with the cement job, and had to go back again and again and again and again to resqueeze it, different levels of deposition, is that right?

A. In that well they had two or three different objectives. I think all of those were what are called precautionary squeeze jobs. They did them prior to testing.

Q. I take it there are always various -- let me stay with your analysis. For some reason as I understand it when, you didn't explain this before, but you talk about an average porosity in your report of 12.32 per cent, is that right?

A. That's correct.

Q. Is that fairly low?

A. No, sir, for Smackover and Norfolk, which are formational names for the objective sands in that area, those would be about average.

Q. 15 would be more --

A. 15 would be a better porosity, but it will produce down to as low as 7 per cent.

Q. It's not extraordinary by any means?

A. It's average, in the middle.

Q. You then apparently discounted water saturation, using, coming up with these numbers, I just, all I'm doing is reading what you've got, discounted by 40 per cent or possible water saturation.

A. By doing that I'm assuming that there is a water content in that reservoir of 40 per cent, that the void space in the reservoir contains 60 per cent oil and 40 per cent water, so I have to discount it that 40 per cent to get to the oil content.

Q. I take it if you're off, really not 40 per cent, if it's 60 per cent, you're off by 20 per cent. Or if it's 20 per cent less, you're off by 20 per cent in the other direction?

A. That's correct. Normally I try to calculate those from the suite of logs we have.

Q. I understand that. We're now reconstructing your mind had you been sitting back there in February of 80.

A. Right.

Q. Then, there is another variable, typical pressure depletion reserve factor, right, recovery factor. You have a 15 per cent factor for discount there, is that right?

A. That's an 85 per cent discount.

Q. All right, 85. If it is more or less, every point is another point off one way or other?

A. That is again an experience factor, Mr. Fawer. From the years of experience that I have, we have found that a pressure depletion reservoir, a reservoir that is only producing by its own pressure or gas dissolved in the oil, will produce about 15 per cent of the oil in place under primary production.

Q. I understand. Again it's one more variable you need to deal with?

A. That's correct.

Q. Apparently, you only assigned a -- this is approximately 640 acres?

A. That's the section approximately.

Q. That's the section. You only assigned a production area of half of that? 320.

A. That's correct.

Q. 320. So basically you're saying one half of the unit, right, one half of it -- what do you call the whole thing?

A. Gas unit.

Q. The one half of it is worthless, in terms of your calculation?

A. One half would not contribute anything to this well.

Q. There is nothing under there?

A. Right.

Q. Lot of saltwater?

A. That's what the dry holes indicated later on.

Q. I take it to the extent it's 75 per cent non-productive, you have missed by 25 per cent, or on the other hand, 75 per cent productive you have missed in the other direction?

A. That's correct.

Q. All of these are thrown into the calculation, put a decimal point and multiply by these various factors?

A. That's correct.

Q. And let me see what else. There are some other factors I think you then -- you then factor in a discount factor, another 40 per cent discount factor some place along the lines, right?

A. That was after I had calculated the ultimate total revenue for the well and the total revenue per acre, then to establish a fair market value I used a 40 per cent of that ultimate revenue as a fair market value.

Q. Then you come up with the value, and that's -- I take it that is before or after taxes?

A. In this case it would be after taxes, because royalty owner doesn't pay anything but severance tax. He doesn't pay the windfall profit tax -- Only the state severance tax.

Q. All of this, is there somebody sitting there with all of this information, you know, like you perhaps, although you weren't sitting there at that time. This is what it would come up to if you calculated all of these things and if you took all of these into consideration, and you were absolutely right, these are the numbers, right?

A. That is correct.

Q. Okay. Do you know of -- do you know that the five ten thousandths sold to Judge Nixon, okay?

A. Yes.

Q. Do you know whether or not he knew anything about the value of this well?

A. Mr. Fawer, there would be no possible way that I would know anything that Judge Nixon would have known about it.

Q. I understand that.

A. I have never discussed it with Mr. Fairchild or with anyone else.

Q. I understand that. But without this information, even a fraction of it, I take it a third party would have no awareness of the value of this piece of property, right, or this royalty interest?

A. A professional in the business, such as myself, would have.

Q. Of course. Have you ever run into him in any geological meetings?

A. No, sir.

Q. Okay. So what I'm asking, talking about Joe Q. Public. Joe Q. Public wants to make a royalty play, you know what I'm talking about, take a shot at the action, right?

A. All right.

MR. FAWER:

Q. He doesn't have any of this information. He hasn't one bit of knowing the value is one 1,000, 10,000 or 30,000, right?

A. That is correct.

Q. Okay. And I take it the value that you came up with gets increased buy some proportion by 19 -- a year later in February of 81, correct?

A. Correct.

Q. Because what is the difference? I mean gas prices increase. That's all it is, right?

A. The main difference, Mr. Fawer, is oil price. It jumped almost double in a year.

Q. Now tell me how anybody would know in Januanry -- excuse me, in February of 80 that the price of oil a year later is going to go up rather than down?

A. No one knew, but everybody in the business including bankers seemed to think that it was and they were mixing those in their calculations at Exxon.

Q. Some people like the expectation of the gold market two years ago?

A. This was even worse. They were escalating the prices of oil up to 70, $80 a barrel.

Q. Somebody lost a lot of money?

A. They certainly did.

Q. My point being, the price you show it as a year later is simply because with hindsight we know that the cost -- excuse me, the sale price of oil is higher a year later?

A. I need to explain that a little bit if you don't mind.

Q. Sure.

A. The reason I know the price a year later is that I personally have an interest in the Chonchula field, a working interest, which is the field just to the north of this one, approximately the same depth and the same reservoir rocks and the same characteristics and it was producing at this time and I was drawing checks from my interest and I went back to my files and in February of 1981 I was getting $27.69 per barrel after taxes.

Q. Do you know of any -- excuse me. What's the name of the field?

A. Chonchula.

Q. That's the neighboring field?

A. Right.

Q. Do you know of any interest other than these three wells that Judge Nixon has?

A. No, sir, I do not.

Q. So you as a professional happen in addition to have a working interest in some neighboring field or royalty interest?

A. That's where I got my information.

Q. As I said, but that is no way attributable to -- John Q. Public would not have that information, would he?

A. Mr. Fawer, John Q. Public got no business going into the oil business, truth of the matter, without asking someone knowledgeable about it. It to me would be comparable to my walking into a stockbroker and saying here's $10,000, buy me some good stocks.

Q. People do that every day, don't they?

A. Not to my knowledge. None that I know.

Q. You never heard of any discretionary buying in the stock market?

A. Yes, I have. It's with a broker that they know and know he is knowledgeable and they trust him.

Q. Fine. What you're saying is that John Q. Public at times if they have faith in a given broker will give him the discretion to invest their money. Fair statement?

A. Fair statement.

Q. Wiley Fairchild, successful man in the oil and gas business, right?

A. Right.

Q. If you were going to pick somebody out, by the way, brokers are wrong at times, aren't they?

A. Yes, sir.

Q. In their choices?

A. Absolutely.

Q. They don't intend to make mistakes for their client but sometimes they don't put their clients in good investments,

right?

A. I have the same experience.

Q. Fine.

A. I have done the same thing for some of my clients but I tried to eliminate the risk by my knowledge of the advice.

Q. I assume those clients make an investment based on your expert advice sometimes make money, hopefully more times than they lose?

A. I wouldn't have those clients if they didn't.

Q. Wiley Fairchild is somebody that a third party, John Q. Public would perhaps rely upon to choose investments for, correct?

A. Correct.

Q. And so if the Judge shows such to have -- or Wiley agreeing to allow the Judge to invest in certain royalty interests, that would make sense from the unknowing third party, right?

A. It would.

Q. Thank you. Perhaps -- and if there's a price to be put on these interests, it would be Wiley Fairchild rather than the third unknowing party who would be in the best position of the two to set that price, correct?

A. Yes, sir, I think I would probably be more qualified to do that than even Mr. Fairchild.

Q. But he didn't ask you to?

A. No, he didn't.

Q. And in fact, let me just ask you by the way, we've dwelled on the Wilkie field at some length. You apparently evaluated the other two wells at far lesser value? I'm talking about the Green Creek field at 5,000 and change and the other one at 6,000 and change, the Ross field, right?

A. That's correct.

Q. As a practical matter, the Rogers well is more valuable, that interest is more valuable as time went on obviously than the Covington field, right?

A. Yes.

Q. And coming back then to yourself, I gather though, so we understand, there are times even after production you yourself have made investments where you thought that you had a very successful well or well that should be extremely profitable even after completion and testing only to find out that it was not so profitable, correct?

A. Correct.

Q. And it is therefore the reason as you said when you first got on the stand that it is a royalty play and simply a risk that you try to minimize depending upon whose advice you take in making the investment, correct?

A. Correct.

Q. And when you're relying solely on the expertise or advice of that other party it is left to that other party to make all the determinations as to the perspective value of the well,

right?

A. That's correct.

MR. FAWER: I have no other questions, thank you. I will offer into evidence at this time Exhibits 34, 35, 36 and I think you have one, sir.

THE WITNESS: 37. I believe that was one of mine, but you probably have one just like it.

MR. FAWER: 37. We can substitute. 37. Thank you. I will get you a copy.

THE COURT: Any objection?

MS. LITTLE: No objection. May I ask a few questions?

THE COURT: Yes.

(Exhibit No. D-34 marked.)

(Exhibit No. D-35 marked.)

(Exhibit No. D-36 marked.)

(Exhibit No. D-37 marked.)

REDIRECT EXAMINATION

BY MS. LITTLE:

Q. Mr. Jackson, getting back to this core analysis question on the Wilkie well, what's your best recollection as to when you were receiving the core analysis from Mr. Fairchild?

A. Well, my best recollection is that I was getting them as they came to him and which would have been as they were being cored and the analysis sent out to the core labatory which would have been in December of 1979 and January of 1980.

Q. Are you aware of any arrangements that Mr. Fairchild had with the Exxon Company to pay his own way for his interests?

A. I am not aware of any, or I was not aware of any at that time.

Q. Is it common practice in the business for people with working interests who get this information to share it with other professionals in the business?

A. Only if they have made a trade or if they can swap some information from some -- force some other information that they wanted. Trading of information is something that's very common in this business, but you're very secretive about it. It's usually very confidential and the only way that you would trade something that is that confidential would be that you've got something equally as good from another party.

Q. If you assumed that this core information was not available in February of 1980, have you performed calculations to indicate what the value, the fair market value could have been assuming that information was not available?

A. Assuming I have no information in February of 1980 I did. I used the comparable nearby well and made a calculation.

Q. Which well is that?

A. That he would have been the Baldwin. North of the Wilkie. It's I believe called the Getty Oil Company Baldwin-21-7 which was completed in 1977.

Q. Do you have information about that well?

A. I think I have. Let's see if I can find it.

Q. Can you perform a quick calculation here using that information as to what the fair market value would be?

MR. FAWER: Your Honor, I'm going to object. Sounds like a Chinese menue. If one doesn't work you go to another. You don't like Column A to go to Column B.

MS. LITTLE: I think I'm entitled to use a different method.

MR. FAWER: You told him to use a method.

MS. LITTLE: You questioned that method.

MR. FAWER: I questioned it. I seemed to establish it.

MS. LITTLE: May me calculate it by another method, Your Honor?

THE COURT: Yes, but hurry up.

THE WITNESS:

A. I don't think I can calculate it quickly, Ms. Little, because I don't seem to have with me the production figures for the Baldwin well. So I don't think I could do that very quickly, but I would be able to estimate that it would be --

Q. That's okay.

A. -- less than the other. I did have something else here though that I wanted to mention.

Q. Let me --

A. Excuse me. Go ahead.

Q. A question was posed to you about the riskiness of --

A. Excuse me.

Q. Did you find it?

A. I did. I just found that I had already calculated on that basis. February 25th the closest well was the Getty Baldwin gas unit 21-7. It produced 249,265 barrels of oil, 860,832,000 cubic feet of gas in 1979. These are from the records of Alabama Oil and Gas Board. Assuming a price comparable to Chocnchula and that the Wilkie would be as good as the Baldwin well, and this was assuming it would be as good or better actually because I was basing that on cores which were taken prior to February of 1980, then I show that assuming it was just like the Baldwin well that it would have been worth 9,698 for the three acres.

Q. So instead of the $20,000 figure you got it would be $9,000?

A. Right. And that's based on a well which was to the north of this well.

Q. That's as of February 1980?

A. That's correct.

MS. LITTLE: Okay.

MR. FAWER: Two minutes, Judge? One minute.

RECROSS-EXAMINATION

BY MR. FAWER:

Q. Just answer fast, okay?

A. Yes, sir.

Q. Why did you choose the Baldwin well that was 3 wells north of dry holes? I mean I'm just curious.

A. It was the only producing well.

Q. But you didn't tell her you got 3 dry holes before you got to that between the Baldwin well that produced and the well that we're now looking at in February 80, there are 3 dry holes, right?

A. Not between it, no, sir. The dry holes --

Q. Going south.

A. The dry holes are southeast and southwest and the dry holes are enlarge cuts into large faults and are not in the reservoir.

Q. So we understand -- I think I got 22 seconds. If I understand you correctly by simply using a different calculation you went from 20,000 down to 9,000, right?

A. By going to a comparable well calculation.

Q. I guess I could give you some other theory of calculation and we could get to a lower figure or a greater figure, right?

A. There are numerous methods of doing this. Most are less accurate than the one I used.

Q. The point of the matter is it's all in the eye of the beholder and the judgment of a person like you?

A. That's correct.

Q. Right. You've been right at times, you've been wrong at times and you're an expert at it, right?

A. Absolutely.

Q. You've lost money thinking that you were going to make a lot of money and retire, right?

A. I don't think I'll accept that because I don't recall ever having lost money drilling a well.

Q. I guess not losing but your slap company venture you thought was a hell of a well after you had it tested after you looked at the core analysis and it didn't work out that way, right?

A. Well, that well's paid me over $40,000 last year. It was pretty good.

Q. I understand that, but you thought it was a lot better than that?

A. Yes, I did.

MR. FAUER: Thank you so much, sir.

THE COURT: Thank you sir. You may step down. Mr. Weingarten, how many more witnesses do you have?

MR. WEINGARTEN: May we approach, Your Honor?

THE COURT: Yes. We'll recess until 9:00 in the morning.

(Recess)

(End of Volume 10.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

UNITED STATES OF AMERICA

V. CRIMINAL ACTION NO. H85-00012(L)

WALTER L. NIXON, JR.

BEFORE: The Honorable James Meredith
Senior United States District Judge

DATE: February 4, 1986

PLACE: Hattiesburg, Mississippi

VOLUME 11

DAVID A. SCOTT
COLLEEN O'CONNOR
SCOTT & O'CONNOR
COURT REPORTERS
Post Office Box 2202
Jackson, Mississippi 39225-2202

THE COURT: The defendant may proceed.

MR. FAWER: Your Honor, the defense would call Glen White.

GLEN LEWIS WHITE,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. FAWER:

Q. Mr. White, would you state your full name?

A. My name is Glen Lewis White.

Q. Where do you live?

A. Live in Petal, Mississippi.

Q. Which is a town right next to Hattiesburg?

A. That's correct.

Q. How long have you lived here?

A. Lived here approximately 20 years permanent residence.

Q. What is your profession?

A. District attorney for Forrest and Perry Counties.

Q. And how long have you been district attorney?

A. Been district attorney for two years.

Q. And let me just ask you this. Tell us very briefly where you went to law school and what your professional experience has been since that time.

A. Tended the University of Mississippi Law School, graduated in 1977. Did a legal internship in the criminal justice division at the law school. Served as a legal intern with the

D. A.'s office under Jon Mark Weathers. In the spring of 77, the position of assistant D. A. was created. I got the appointment in July 1, 1977 under Jon Mark Weathers. I was reappointed under assistant D. A. under Paul Bud Holmes and elected after that tenure.

Q. To say the least, you've been with the district attorneys office all your career?

A. Either as an assistant or as now the district attorney. That's correct.

Q. Let me ask you this. Bud Holmes became district attorney in January of 1980; is that correct?

A. Yes, sir.

Q. There is a case involving the State versus Drew Fairchild. Are you familiar with the name of that case?

A. Yes, sir.

Q. Where did you first become aware of the fact that that case was a case in your office?

A. Talking about in my office as district attorney?

Q. No, no. Talking about the district attorneys office in which you were assistant district attorney.

A. Became aware of it just prior to it going on the grand jury docket. I believe that was in the summer of 81.

Q. Had you had any prior involvement in that case?

A. None at all.

Q. Had you discussed the matter with Paul Bud Holmes at all?

A. I overheard conversation with he and Katie. He was giving that case to Katie Madison who was the other assistant D. A. There was no direct conversation with me.

Q. So the jury understands, you had been with the D. A.'s office from 1977 on. Katie was there a shorter period of time. She was less experienced than you; is that a fair statement?

A. Yes, sir.

Q. And this case was one at least for purposes of grand jury presentation they had assigned to whom?

A. Katie Madison.

Q. Could you very briefly just describe -- I know there's only three of you in that office; Bud Holmes, yourself and Katie at the time; is that right?

A. That's correct.

Q. Can you just tell us what is the separation of the division of work? How is the office run?

A. At that time?

Q. Yes.

A. I would take in all the new files in the arrest docket. I go downstairs, look at the arrest docket, receive the police reports, put them on a grand jury docket, set them for trial or plea whatever. There was really no delineation as to attorneys and occasionally Bud would assign one to Katie or a particular case you handle this and you make sure this is done.

Q. Pretty much on an adhoc basis?

A. Correct.

Q. A case that was assigned to Katie, did that necessarily mean she would try the case or if you were assigned did that mean you would necessarily try it?

A. Yes.

Q. If there was a trial?

A. Correct.

Q. Would each of you handle aspects of the case depending on who was free at the time?

A. Occasionally, yes. If we get in a bind, I would offer.

Q. What was Bud Holmes as D. A. you sort of described what you and Katie did. What did Bud do?

A. He would more or less supervise. He was an administrative type district attorney. He would review the cases. I would say upon the average, he didn't realize the number of cases that were going through day to day, the petty burglaries, they didn't get involved in those particular cases. But he would get involved in the controversial cases, the notorious cases and deal with lawyers that would come through the office, deal with the public relation aspects of the office.

Q. Did his office obviously his actual office was right in the suite, right?

A. That's correct.

Q. Did he basically run pretty much of an open door policy in terms of his office? Would you know what was going on in his office or was it usually closed doors?

A. The way his office was he had a back door which would open up into a library area had a hallway there and turn right and my office and Katie's office were adjoining across the hall so we could converse and communicate without getting on the intercom system.

Q. Bill Porter who was he?

A. Bill Porter was an attorney practicing law in Forrest County.

Q. To your knowledge were he and Bud Holmes close?

A. Yes.

Q. I'm talking about in the 1981 period?

A. Yes, they were.

Q. That friendship as far as you know went back a period of time?

A. Ever since I knew both of them.

Q. By the way, you had spent I take it you got to know Bud well after you became D. A.?

A. Correct.

Q. Did he spend a great deal of time on the telephone?

A. Yes.

Q. Why do you laugh?

A. He just stayed and inordinate amount of time on the phone. He was always on the phone.

Q. Is it fair to say he would reach for the phone as quickly as he would reach for anything you have ever known?

MR. WEINGARTEN: Excuse me. Object to a leading question.

MR. FAWER: You're right.

MR. WEINGARTEN: Thank you, Mr. Fawer. Even this defense attorney should know a leading question.

MR. FAWER: That's a leading question. He's absolutely right. Grade him on that one.

MR. FAWER:

Q. Tell the jury at this point how would you describe the propensity of Bud Holmes to use the telephone? Is that all right? Okay?

A. He'd let his fingers do the walking so to speak. He was on the phone a good deal of time. When we'd go to court, I'd have to get him off the phone. He stayed on the phone a good bit.

Q. If you had something given situation when he you wanted to go in to speak to him, would that be interrupted fairly frequently by his making phone calls to other people?

A. I'm beg your pardon?

Q. If you were to go into his office, excuse me, to discuss a matter with him, business whatever it might be, would it be common for him to interrupt your conversation by making phone calls?

A. That was done, yes. Or receiving them.

Q. Or receiving them, okay. Now moving on. Did you have anything to do with the grand jury presentation of the Fairchild Watkins matter?

A. I may have been in there but I didn't present the case because I didn't have the file and didn't know anything about the file.

Q. Would that have been in August of 81 to the best of your recollection?

A. To the best of my recollection August, latter part of July.

Q. Did you have anything to do with the case, you Mr. White anything to do with it from the time of the indictment on August 26 that's in the record here? Beyond that point tell us when you have that you recall first having anything to do with the case?

A. First thing that I can recall doing is when Robert Watkins the co-defendant was arrested in the state of Texas and I believe I helped get what we call the national crime information computer sent out a teletype saying we would extradite him. He wanted him back and I think I gathered the papers up for extradition that we wanted him returned. That was a routine matter got them and sent them off.

Q. Is it fair to say that is the way extradition is the way one state gets another person who's been a defendant who's been apprehended in another state that's the legal procedure by which you bring him back?

A. Yes.

Q. Is that something that involves a fair amount of paperwork usually a period of time goes by before it can be a completed?

A. In triplicate the indictment, the warrant and judges and clerks certificate with the seals and send it to the governor's office and a matter of paperwork.

Q. Beyond getting those papers together, what's your next recollection of what went on so far as you were concerned?

A. I sit back and watch what happened out as far as any actual participation, none.

Q. Were you aware that in January of 1982 that Drew Fairchild entered a plea?

A. Yes.

Q. Were you aware that there was a plea agreement between he his attorney and Bud Holmes?

A. Yes.

Q. In Mississippi in your office in particular is it common to reduce those to writing or are they gentlemen's agreements?

A. No, they're verbal because of the number of cases.

Q. So just handshake or I don't know the handshake. Just an agreement between two gentlemen?

A. Right.

Q. What was the agreement as far as you know?

A. Five years probation to a five years sentence to the Department of Corrections suspended, written order of probation and I believe a $5,000 fine. It was the same recommendation

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that he was to get with the U. S. Government.

Q. The same thing he would have gotten less or a fine?

A. Right.

Q. How about what is he supposed to do in exchange? What does he do for you?

A. The plea bargain occurred when Robert Watkins gets in Texas and supposed -- I was told that he was to testify on behalf of the State of Mississippi against the pilot Robert Watkins.

Q. After his plea, was Watkins available in Mississippi for trial or what happens if you know?

A. He was left the jurisdiction of Texas. He was apprehended in Florida. At that point in time extradition proceedings were then initiated and he came back to the State of Mississippi and surrendered with his attorney Lee Bowman. He posted $100,000 bond. The case was set for trial --

Q. Let me stop you. Do you recall the date he came back into Mississippi was January 26th of 83?

A. I don't know the exact date.

Q. I just want to stop you there so we can deal with the intervening period.

A. True, okay.

Q. There were according to a document we have a series of continuances from the time that Drew plead guilty for about a year. Did you have anything to do with those continuances just preparing motions, the orders, anything to do with them?

A. No.

Q. And there came a time at the end of December that a motion was filed by the district attorneys office in the Drew Fairchild case; are you familiar with that?

A. Yes I am.

Q. What was the motion and what was your role in it?

A. Motion to pass the case to the files.

Q. Who prepared the document?

A. I did.

Q. And at whose direction?

A. Bud Holmes.

Q. Did you have a conversation with him shortly before you prepared it about preparing it?

A. Yes I did.

Q. Tell the jury what it was.

A. I came into the office around the corner. Ms. Madison was not in her office at the time. So he came in my office. Asked me to prepare a document to pass it to the files. Then we had -- well, we had a long conversation about the aspects of doing something like that after he pled guilty.

Q. Tell the jury.

A. And we went over it and discussed it.

Q. Tell us what you said and what he said as best you can.

A. In essence, I was asking why he wanted to do something now after he had pled guilty and why would we want to do that.

No. 1 the effect never done it before after pleading guilty and waiting sentencing. No. 2,, I don't think it would be very popular thing to do for --

Q. You're saying this?

A. Yes. And the ramifications of doing something such as that. He indicated to me that he had talked to Bill Porter that he was concerned that Robert Watkins would not be brought back into the State of Mississippi. No. 3, that he had promised Bill Porter that he would pass it to the files and that it would not be dead that he could reinstate it if Watkins was brought back. He told me he was concerned that Judge McKenzie taking the bench just elected circuit judge.

Q. Who was concerned?

A. Bill Porter was. Concerned about upholding the plea agreement they had reached with Bill Porter and Bill Porter was concerned about honoring that agreement once Judge McKenzie assumed the leverage we would have in January of 1984.

Q. Just a few days later?

A. Yes. Yes, excuse me January of 83. And he said it would not effect the disposition of the case if he was reinstated if Watkins was ever brought back into the jurisdiction or state of Mississippi and go ahead about the case at that point. He was concerned that Dickie McKenzie would take it up and go ahead and sentence him at that point in time and he did not want to sentence Drew until he testified because in Mississippi at the time we had what is referred to as the voucher rule that you cannot put a witness on the stand and if he'd lied about his testimony then that would not be used as subjective evidence of guilt.

Q. Explain to the jury why if you had gone ahead with the sentencing and then called for him to testify that would have presented a problem from a prosecutor's point of view.

A. He's already been sentenced. Bud had expressed this before and he expressed it at this time if he gets on the stand there's no leverage over his head so to speak and in Mississippi if he lies about it, all you've got is perjury. You cannot use it as a guilt of the co-defendant and you could not impeach your own witness if he's sentenced and said the deal's over with, I'm not going to testify, that's it.

Q. Is it normal therefore to hold off on the sentencing until the agreement is satisfied by the defendant in this case namely by testifying?

A. That's normal, yes.

Q. This conversation took place in Bud's office, your office?

A. My office.

Q. Two people sitting down? I take it this is Bud explaining to you his reasons for doing this?

A. Yes.

Q. The case was in the posture where you had an absent co-defendant correct?

A. Correct.

Q. And was the agreement conditioned upon agreement with Drew upon his testifying against that co-defendant?

A. To the best of my knowledge.

Q. At the end of that discussion did you agree to prepare the motion or the order?

A. He told me to do it. He was the boss. I did it, yes.

Q. I take it you tell me -- I don't want to lead you. You had reason or you thought it shouldn't be done that's what you told us?

A. Yes.

Q. He explained to you his reasons?

A. Yes.

Q. Were you satisfied at that point?

A. I had reservations but he, you know, I was satisfied what he said it could be revived. It wasn't to be dismissed. I was concerned that we could get it back.

Q. Was there any reason for you to think that he was not explaining to you precisely what he had discussed with Bill Porter?

A. Not at that time, no.

Q. And in any event, at that time you prepared the order; am I right?

A. Yes, I did.

Q. Let me show you what's Government's Exhibit 4 basically in legal terms a motion -- excuse me, an order setting forth the reasons for why it would be passed to the files including the fact that Watkins was then a fugitive and at that time he could be brought back when and if he was brought into the state, correct?

A. Correct.

Q. And this is the document and did you bring it over to Jack Weldy to Judge Weldy or did you send it? What happened?

A. I dictated it and I don't know where it went after that. Bud's office or Katie's. I don't know what happened to it.

Q. Did you have any reluctance at that time in dealing with Judge Weldy?

A. Did I have any reluctance?

Q. Yeah. Was there any reason why you didn't want to deal with him at that time?

A. No.

Q. I'm just asking the question. It wasn't that you didn't -- you just happened to let somebody else bring over a stack of orders to the judge rather than you; am I right?

A. I don't know when it got presented to him. I didn't do it.

Q. Just so the jury understands --

A. There's no problem. I saw him regularly during the month of December.

Q. Just for fortuitous that you didn't bring it over and get it signed that Katie or someone else did?

A. Right. Somebody would have had to explain it to the judge or give it to him.

Q. Aside from that, did you have anything directing your attention -- excuse me. 33 days later not even 33 days, did you know that in the following month Watkins was in fact brought back to Mississippi or agreed to return to Mississippi?

A. Yes, he came back in with Lee Bowman his attorney.

Q. Based upon his being brought back, did Bud Holmes direct anyone yourself or Katie to prepare an order and a motion and an order bringing the case back to the file?

A. Yes. I don't know which one of us did it, but I know it was reinstated on the docket.

Q. Let me show you what has been marked as Defendant's Exhibit 7. It's a motion and an order. I don't know if you can tell by looking at it whether you prepared it or whether Katie Madison prepared it?

A. I know the order, but I cannot in good conscience say whether I did it or Katy did it.

Q. In any event, this order, this motion and this order reinstated the case to the files, right?

A. Yes, it did.

Q. By the way, when you pass something to the files -- withdraw that and ask you another way. Did the passing of the case to the files in this case in any way benefit Drew Fairchild, in this instance?

A. Not to my knowledge.

Q. Okay. It was in the state of inaction on the inactive files for thirty-three days, right?

A. Postponed the inevitable.

Q. Postponed the inevitable, right. Thirty-three days later is brought back out, correct?

A. Correct.

Q. And I take it that is precisely what Bud Holmes had told you would happen if Watkins was brought back to the state?

A. Yes.

Q. That's what happened. As soon as that happened, case was brought back, correct?

A. Right.

Q. That's in early 83. Were there then efforts made to get Watkins to trial?

A. Yes.

Q. That went on for a period of time, virtually, almost the end of the tenure of Bud Holmes in office?

A. Right, it was set for trial, rescheduled for December, in November he had not hired local counsel and he had an attorney from Florida. Under our rules you have to have a Mississippi lawyer.

Q. This is Watkins?

A. Right. He didn't get counsel, Ms. Matison indicated concern, so I told her the easiest thing to do is set it for a motion, get the attorney here. He didn't show up for the motion, forfeited the bond and he's been a fugitive ever sense.

Q. Nobody knows where he is this to minute?

A. No, sir.

Q. You became district attorney in January 84?

A. Yes.

Q. You were elected in summer of 83?

A. Summer of 83.

Q. Took office January of 84?

A. Correct.

Q. Have you had any involvement, the Drew Fairchild case I take it we have already heard has been processed through the state court, there was a sentencing of Drew, is that correct?

A. Correct.

Q. Were you involved in that aspect of it?

A. Yes, I was.

Q. Was there some communication -- you know Reid Weingarten, don't you?

A. Yes, sir.

Q. Did he speak to you during the period of time that you were district attorney on behalf of Drew Fairchild?

MR. WEINGARTEN: May we approach the bench?

(AT THE BENDH:)

MR. WEINGARTEN: May we have a proffer?

MR. FAWER: Let me say this. I have no need or desire to go into is this aspect of it if you're not going into it.

MR. WEINGARTEN: Okay.

MR. FAWER: I will just in effect stop at this point. He was sentenced in the state court. All I was doing, so we understand. He became district attorney, then he was -- the conclusion of the Drew Fairchild matter, sentencing in state court and sentencing, we brought all that out with Drew. Only reason I'm going into this was to finish up, to start the rest of the facts as far -- just I thought Reid would be going into that as well.

MR. WEINGARTEN: All, when I get up, did we work together on it.

MR. FAWER: I'll bring that out.

MR. WEINGARTEN: You're not going to?

MR. FAWER: Simply, I'm going to ask him if there was any recommendation he brought, you brought Drew's cooperation to his attention.

MR. WEINGARTEN: Absolutely.

MR. PAWER: That's all I'll ask.

MR. WEINGARTEN: Okay.

(Open court:)

BY MR. PAWER:

Q. The only question I had of you, Mr. White, in connection with the ultimate sentencing of Drew Fairchild, was a letter of recommendation or of his cooperation with the federal authorities brought to your attention by Reid Weingarten?

A. I received a letter about his cooperation, yes.

MR. PAWER: Would you bear with me one moment, Your Honor? I think I have no other questions. Let me just check one thing. I tender the witness, thank you. Thank you, Mr. White.

CROSS-EXAMINATION

BY MR. WEINGARTEN:

Q. Good morning, Mr. White?

A. How do you do.

Q. Just following up on Mr. Pawer's last point, fair to say that the United States and Forest County worked together in an effort to bring a fair and just resolution to the Drew Fairchild thing?

A. Yes.

Q. And in fact it was Reid Weingarten and Glenn White who worked together?

A. Yes.

Q. Just getting back to questions about passing the case to files. Do you have a copy of it right before you?

A. No, sir.

Q. Okay. Let me hand you Government Exhibit 4. In your experience in the DA's office, I think you've testified that you've been there your entire legal career?

A. Correct.

Q. How is, how is that legal device, passing a case to the files, normally used?

A. It can be used in various ways. Number one, if you have a weak case, pass it until something comes up. Number two, defendant pleads guilty to one charge, you have three others, you pass the others to the files. It's an inactive drawer what you're doing.

Q. It's a dead file?

A. It's not dead, but it's inactive. You don't normally mess with them again.

Q. In the great, great majority of cases, when a case is passed to files, does that mean that's the end of it?

A. In the majority of the instances, yes.

Q. Is it fair to stay, in the normal usage around the courthouse in Forest County, when someone hears a case is passed to files, that means that's the end of it?

A. That would be fair to say. People would have that connotation, yes.

Q. Would it generally be accurate?

A. Predominantly in the majority of instances, yes, it would.

Q. Now in this instance, is it fair to say when Bud Holmes instructed you to prepare an order that you were concerned?

A. Yes.

Q. That you thought it was a highly unorthodox thing to do?

A. It was the only time I've done one like this.

Q. In fact, was your response just flat out bizarre?

A. It was strange. That's the reason we had a long discussion about it.

Q. And this order ensued, right?

A. Yes.

Q. I note that, who picked the language?

A. He gave me some facts and some reasoning, and I drafted it up basically.

Q. In the order itself, I guess the DA prepares the order and then presents it to the judge for signature?

A. Correct.

Q. There is mention of alleged cooperation by Drew Fairchild, is there not?

A. Yes, there is.

Q. Cooperation with the Mississippi Bureau of Narcotics and supposedly the federal government. Did you know of any cooperation on Drew's part with the Mississippi Bureau of Narcotics?

A. Personally, I knew nothing about the facts of the case, had not read the file, did not know anything. Katy Matison and Bud worked the case up. I would have to confess my ignorance, I didn't know anything except what I heard and what they told me.

Q. You had no independent knowledge whether that was true or not true?

A. No.

Q. Do you know now one of the complaints up in the federal system with Drew, that he hasn't satisfactorily cooperated?

A. I've learned that since this time, yes.

Q. In the order it says supposedly, cooperated supposedly with the federal government concerning the investigation?

A. Yes.

Q. Did you put supposedly in because you were concerned?

A. I didn't know. I was concerned alleging something about the federal government's -- I just didn't know.

Q. Is it fair to say you were trying to fill it with the information that would justify it, but you were terribly, terribly, terribly concerned with the propriety of this document?

A. I was concerned about the implications that we have, yes.

Q. On the second page, you talk about the defendant's right to a speedy trial. He had pled guilty at that point, had he not?

A. Yes, he had.

Q. What concern was there about his right to a speedy trial?

A. That language was put in there, well, in essence Bud indicated Porter had said he was concerned about him having speedy disposition on the sentencing. As far as trial, it did not affect the 270 day rule which is law in the state of Mississippi.

Q. Well, if in fact, passing a case to the file doesn't toll any speedy trial rule?

A. No.

Q. So that was a justification that was put in here without any meaning?

A. Not really, no. It never, I had never come across a case like this before.

Q. Is it fair to say Bud was just grasping for anything he could to fill on this paper for an order to be presented to the judge to pass Drew's case to files?

A. He -- that would be fair. He would say, Bud was the type of person, when he would say something, he'd go make an agreement, he wanted it done that way, trying to figure a way to do it.

Q. You were following instructions in this instance?

A. Yes.

Q. All right. Would you have done an order such as this based on any of the justifications that Bud gave you?

A. Would I have done this?

Q. Yes, based on the justifications Bud gave you at that time?

A. I probably would not have passed it to the files.

Q. Just let's go through his explanation, why did he want to do it? What were his reasons?

A. He had agreed with Bill Porter to pass the case to the files because he was concerned about Dickie McKenzie would not honor the plea agreement, he had agreed with Porter he would not --

Q. Let's take the first one. If Dickie McKenzie was the judge, if it ever came back from files, who was going to be the judge?

A. Dickie McKenzie.

Q. That makes no sense. I'm serious, that's ridiculous.

A. He was concerned he would be sentenced the first week or whatever it would come up, without him having to testify in trial, Dickie could be, get him up in the front of Dickie, and Dickie could sentence him.

Q. If the case went to files and ever came back, who would be the judge?

A. Dickie McKenzie.

Q. Is it really fair to say that business with Porter is patently absurd?

A. I don't think it's absurd.

Q. I mean it makes no sense. If the concern was Drew was going to get sentenced by Dickie McKenzie and the case was passed to file, unless the case died there, if Drew was ever to be sentenced he would be sentenced before Dickie McKenzie?

A. True.

Q. Okay. What other reasons did he give you?

A. He was concerned about Dickie McKenzie taking over. That he was concerned that he wanted him to testify prior to being sentenced so he would insure the cooperation and testimony of Drew.

Q. That had been established for a year, had it not?

A. That he would testify.

Q. You secured that with a series of continuances; Drew had not been sentenced. The testimony had not been secured. You were in a position -- the day before this order you were in a position to use Drew Fairchild as a witness against Watkins, the fugitive?

A. True.

Q. You didn't have to pass the case to files to maintain that situation?

A. No. Did we have to?

Q. Yes.

A. No.

Q. That justification appears a little flimsy.

A. He said he had an agreement with Porter, that was the crux, if you knew Bud Holmes. He made a deal with Porter, he said I'm going to do it and I'm going to do it.

Q. The deal was to pass the case to files?

A. To the inactive files until such time as he testified. All those other reasons he gave me -- know Bud, he told somebody and he was wanting to do it, that was the justification he was using to me.

Q. Did you ever learn later from Bud that there may have been another reason why he passed the case to files?

A. Yes.

Q. What did you learn?

A. After the indictment --

MR. FAWER: Excuse me. He's going to be asked what he learned after the indictment? From what source? I suggest it's hearsay, blatant hearsay.

MR. WEINGARTEN: May we approach?

MR. FAWER: Sure.

(AT THE BENCH:)

MR. WEINGARTEN: Mr. Fawer elicited information from Glenn White as to what Bud Holmes' reasons were to pass the case to files. I'm entitled to do exactly the same thing.

MR. FAWER: Wait a minute. We're talking about the basis for the preparation of the order. Are you saying he learned it from Bud Holmes?

MR. WEINGARTEN: Yes.

MR. FAWER: He's going to tell you that Bud told you he did it because of Nixon?

MR. WEINGARTEN: Yes.

MR. FAWER: I think you have a right to -- I asked him that this morning and he didn't say that to me. I think you better do it before you do it, because I'm telling you he doesn't say that.

MR. WEINGARTEN: He told me that.

MR. FAWER: I'm telling you he doesn't say it.

MR. WEINGARTEN: All right, let's see.

MR. FAWER: You better do it outside the presence of the jury and find it out.

THE COURT: Let's go ahead.

MR. FAWER: I'm telling you that. When is this supposed to have taken place>

MR. WEINGARTEN: After Bud's indictment.

(OPEN COURT:)

MR. FAWER: I maintain my motion. I maintain my objection to this evidence, Your Honor.

THE COURT: You what?

MR. FAWER: I object to the hearsay he's seeking.

THE COURT: Overruled.

BY MR. WEINGARTEN:

Q. Did Bud Holmes himself ever advise you that there may have been another reason why he asked you to prepare an order passing Drew's case to the files?

A. Subsequent to his indictment.

Q. What did he say?

MR. FAWER: Excuse me, this is subsequent to Bud's indictment. He's eliciting testimony from him of what Bud Holmes, not the defendant, said to him after Bud Holmes made his plea agreement with the government.

MR. WEINGARTEN: No, after his indictment.

MR. FAWER: When was it, though.

THE WITNESS: In pretrial preparations when he was interviewing me.

MR. WEINGARTEN: May I proceed?

THE COURT: Proceed.

BY MR. WEINGARTEN:

Q. And what did Mr. Holmes say to you?

A. Said that he was, the only thing he was concerned about in the indictment was the allegation about the telephone call.

MR. FAWER: May we approach the bench, Your Honor. Does this have to do with passing the case to the files?

MR. WEINGARTEN: Yes.

MR. FAWER: Okay, go ahead.

BY MR. WEINGARTEN:

Q. Please continue.

A. He informed me at that point in time there were other reasons for passing it to the files I was not aware of at the time.

Q. What did he say to you?

A. Boils down to he told me he had been out to the farm, there was a phone call made he had not disclosed to the government, as a result of conversations that he had, that was one of the reasons that this order was prepared, that I did not know about.

Q. Did he mention anyone else involved with the phone call?

A. Mentioned that he and Judge Nixon were at the farmhouse, they made the phone, they had a phone call.

Q. Did he indicate who that phone call was made to?

A. Wiley Fairchild.

Q. Did you know anything about that when you prepared this order?

A. Absolutely nothing.

Q. Exactly what time or where in connection with other legal events did Bud Holmes tell you this?

A. It was in preparation for his trial when I found all this out. He was interviewing me, the attorneys were interviewing me concerning his case that he was coming up on.

Q. When you heard Judge Nixon's name, did you make any connection with any prior relationship Bud Holmes had with Judge Nixon?

A. They were friends.

Q. How do you know that?

A. They ate lunch together and, you know, they would call each other. I knew they were friends, you know, from being around Bud.

Q. Is it fair to say you have seen Judge Nixon in Bud's presence on more than one occasion?

A. Yes.

Q. Is it fair to say that you have personal knowledge of a friendship between Bud Holmes and Judge Walter Nixon?

A. Yes.

Q. Do you know whether or not Bud Holmes was on a first name basis with Judge Walter Nixon?

MR. FAWER: Your Honor, is there any issue? We stipulate the friendship.

MR. WEINGARTEN: Whenever Mr. Fawer doesn't like the evidence he's willing to stipulate.

MR. FAWER: I'm not saying -- I'm perfectly willing -- is that really an issue, the friendship?

THE COURT: Proceed.

MR. FAWER: I don't understand that.

THE COURT: Proceed.

BY MR. WEINGARTEN:

Q. Mr. White, you first became aware of Drew Fairchild's case when he was indicted or came to your office in July 81, is that fair?

A. July and August 81, yes.

Q. While you didn't personally handle the case I guess until you became DA, I guess in a three man office you're familiar with hot cases or cases involving public people?

A. Yes.

Q. Is it fair to say Drew Fairchild was one of such cases?

A. It gained notoriety.

Q. Is it fair to say the notoriety was caused by intense media?

A. They were there whenever they did anything, with exception of this order.

Q. Is it fair to say when there was a continuance the media was there and the media reported it?

A. Yes, they were there. I know on one occasion when Drew had to have back surgery they were there filming him.

Q. Is it fair to say a TV station in particular had a great interest in the case?

A. WDAM.

Q. Is it fair to say every time there was a legal proceeding in court involving Drew's case, DAM was there?

A. I would, to the best of my knowledge they seemed to be there, yes. Any time there was anything of substance going on they were there.

Q. Is it fair to say that the media attention was directed to the fact that Drew's father was Wiley Fairchild?

A. I would say that's true.

Q. Is it fair to say that that attention continued from the indictment in state court in July 1981 through and including this day?

A. Yes.

Q. Okay. You mentioned that the media did not pick up immediately on the case on -- the fact that the case was passed to files?

A. True.

Q. How did that happen?

A. The order was signed the 23rd day of December. And they didn't pick up on it, as I recall until the first week in January, somewhere in that area after Judge McKenzie was on the bench, it was in the paper and on TV.

Q. Was Bud Holmes of a mind typically to cooperate with the press?

A. Yes.

Q. Is it fair to say he sort of had an open door policy with the press, constant communication with the press?

A. Yes.

Q. Is it fair to say he went to efforts to prevent the order passing the case to files from coming to light of day?

A. I don't know. But I know when it was brought over to the Judge's attention there was no press there.

Q. Bud Holmes didn't hold a press conference about passing the case to files, did he?

A. No.

MR. WEINGARTEN: Thank you. I have no further questions.

REDIRECT EXAMINATION

BY MR. FAWER:

Q. The case, you know and I know and I think Mr. Weingarten knows --

MR. WEINGARTEN: I'm going to object to that. That's absolutely unnecessary.

MR. FAWER: I haven't -- I'm going to ask a question that's based on all three of those facts.

BY MR. FAWER:

Q. You sent stacks of orders and motions over to judges?

A. Yes. When you go over there, usually there.

Q. If you have orders would the district attorneys office have a set of orders to file in case or stacked together and either you or Katie or one of the attorneys bring them over to the judge for signature?

A. Basically what we do if you have them and you were handling the case and you had to hand it to the judge and explain it. What we were doing, you would carry yours.

Q. And you might carry 5 of yours and one of Katie's or Katie would carry 3 of hers and 2 of your cases or someone going there and taking care of that process right?

A. Right.

Q. I take it the judge might sign it right then and there or he would take it under consideration an sign it the next day whatever it might be?

A. True.

Q. Who then files once he signs it and it gets a stamp says filed, right?

A. Yes, sir.

Q. Apparently it was dated the 23rd?

A. Correct.

Q. And then filed the 27th just dated just before Christmas, filed just after?

A. Correct.

Q. Tell the jury the filing of this document is that something that just gets done in the clerk's office?

A. After the judge signs it, he'll give it to the circuit clerk and the circuit clerk will xerox a copy of this for the minute book and the judge signs a minute book at the end of the term or end of the month. Then the clerk will file this in the court file. When she she receives it, put the stamp on it.

Q. Is the the court file open for any member of WDAM, Hattiesburg American, John Q. Public?

A. Public record.

Q. Do you know of any effort that Bud Holmes made to hide the passing of this case of the file?

A. Couldn't. It's public record.

Q. In response to that question, do you know that Mr. Reid Weingarten askd you do you know of anything Bud did to hide the fact he passed it to the file?

A. No.

Q. I asked you, Bud had told you that all of this when he was telling you about it, he attributed all of it, as I understand it, the reason for it to Bill Porter being afraid of McKenzie sentencing the man post haste; is that right?

A. Correct.

Q. So we understand, McKenzie would have been a new judge?

A. True.

Q. There is a fair amount of politics involved in this, isn't there?

A. Yes.

Q. Let the jury know a little bit about that. First Bill Porter and McKenzie were they friends or enemies politically?

A. Friends.

Q. Was there some feeling as far as you knew of McKenzie doing something precipitant could he insist on sentencing the man when it came up the first week in January, February, whenever it may be?

A. There's a possibility.

Q. He had the right to do it?

A. Yes.

Q. Did the Judge McKenzie as simply continued -- let me stop a minute. I take it the alternate to passing it to the files was just continuing it for another to the next term?

A. True.

Q. If it was continued before into Judge McKenzie's period when he became judge, did Judge McKenzie have to live with the plea agreement? Did he have an obligation to or could he back off it?

A. Under the dictates of the Mississippi Supreme Court if a defendant enters a plea of guilty to the charge, then you're bound by the terms upon which they accept that plea of guilty and it came up subsequently. I was bound by the terms.

Q. You were?

A. Yes.

Q. But was he?

A. Yes.

Q. Did he actually live with that plea agreement which it was ultimately sentenced?

A. No.

Q. That's McKenzie?

A. The only recourse you could have is if the defendant files a motion to withdraw the plea of guilty.

Q. Let's come back to the period. Dickie McKenzie could have sentenced Drew Fairchild without your therefore getting the quid pro quo without your getting his testimony, right?

A. Yes.

Q. Bud told you that Porter didn't want him sentenced by McKenzie. He was afraid of McKenzie not living up to the plea agreement that's what Bud told you, right?

A. Yes.

Q. You knew Bud and Porter very were friendly?

A. Yes.

Q. Did you know that Bud Holmes sought out this case from the Federal Government to help Bill Porter collect his fee?

A. After my first knowledge was that he had had a conversation with Bill Porter and that one of the things that Bill had mentioned was nothing had been done on Drew Fairchild's case that Bill had represented him and done all this. One of the factors was he had not been paid for his efforts. The Government did not prosecute him. I got it from Bud telling me all this.

Q. Did you know however that you sought out the case from the Federal Government?

A. I knew he called George Phillips.

Q. Did you know the reason he did that was primarily to help Bill collect a fee?

A. Didn't know it was primarily I knew that was one.

Q. Is that something you would ever do?

A. No.

Q. You say that because it would be unethical; would it not?

A. I don't know about the ethics of it but I wouldn't do it, no.

Q. You think about the ethics. Would you ever do it?

A. I wouldn't do. Not for that reason.

Q. This is the same man who Bud tells you has some qualms about having the case before McKenzie for sentencing immediately, correct?

A. Pardon?

Q. This is the same man, Porter is the same man whom Bud tells you in December of 82 that Porter is afraid to let Drew just go there for sentencing before McKenzie?

A. Yes.

Q. And that's honor his agreement he's going to pass it to the files until he could get the cooperation, right?

A. Until he could get the testimony, that's right. Yes.

Q. In response to Mr. Weingarten's statement, if McKenzie had sentenced Bud, excuse me, sentenced Drew to whatever he sentenced him to, would your leverage still exist after that or would it be gone?

A. It would be gone.

Q. Would the leverage to a prosecutor be important?

A. Yes.

Q. Do I understand then the first time that Bud then tells you any contrary story concerning these events is sometime in the May, June period of 1985, right?

A. Yes. First time I knew about the phone call was the date or his indictment.

Q. One other question before we stop. Were you aware of that Katie Madison had been involved in the presentation of this case, right?

A. In preparing --

Q. To the grand jury?

A. I don't know if he was there that date or not.

Q. I said involved in the presentation.

A. Preparation, yes.

Q. Was Katie Madison in any way in charge of this case from beginning to end?

A. Yes.

Q. She made the decisions?

A. I don't know about all the decisions. She and Bud made the decision.

Q. Who made this decision?

A. On the order passing?

Q. Of course.

A. Bud made that one.

Q. Do you know of any efforts once this investigation began of Bud trying to get Katie Madison to tell a story contrary to the facts?

A. No.

Q. You never heard Katie complain to about you that?

A. No.

Q. Do you know anything about a deterioration between the relationship between Katie and Bud?

A. Yes.

Q. Do you know what the background of that is?

A. The entire background, no.

Q. By the way, Katie Madison had been in that office by virtue for what reasons?

A. She was appointed by Bud Holmes.

Q. And why? What's the relationship?

A. There's a close family relationship between the two. Her father and Bud were close friends and grew up together and were in business together.

Q. And sometime after the commencement of the investigation of Bud Holmes, there is a deterioration of the relationship between Katie and Bud am I correct?

A. I'm not sure when it began, but somewhere in that area, yes.

MR. FAWER: No other questions, thank you.

MR. WEINGARTEN: I have no further questions, Your Honor.

THE COURT: Thank you, sir. You may step down. We'll recess until 1:30.

(Recess)